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Canada, Bill No. 79, An Act respecting
Indians, Special Committee on, 1951
(SESSION 1951

HOUSE OF COMMONS

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SPECIAL COMMITTEE

APPOINTED TO CONSIDER

BILL No. 79

AN ACT RESPECTING INDIANS

CHAIRMAN—MR. DON F. BROWN)

MINUTES OF PROCEEDINGS AND EVIDENCE [8 REPO

No. 1

THURSDAY, APRIL 12, 1951

MONDAY, APRIL 16, 1951

WITNESSES:

Hon. W. E. Harris, Minister of Citizenship and Immigration.

Mr. D. M. MacKay, Director, Indian Affairs Branch.

Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch.

Mr. W. Cory, Legal Adviser, Dept. of Citizenship and Immigration.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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CONTROLLER OF STATIONERY
1951





SPECIAL COMMITTEE

APPOINTED TO CONSIDER

BILL No. 79—AN ACT RESPECTING INDIANS

Chairman: DON F. BROWN, Esq.,

Messrs.

Applewhaite,
Ashbourne,
Black (*Chateauguay-
Huntingdon-Laprairie*),
Blackmore,
Blue,
Boucher,
Brown (*Essex West*),
Bryce,
Cauchon,

Charlton,
Diefenbaker,
Fulton,
Gibson,
Harkness,
Hatfield,
Jutras,
Little,
MacLean (*Cape Breton
North and Victoria*),

Murray (*Cariboo*),
Noseworthy,
Richard (*Gloucester*),
Smith (*Queens-
Shelburne*),
Simmons,
Valois,
Welbourn,
Whiteside,
Wood.

E. W. INNES,

Clerk of the Committee.

ORDERS OF REFERENCE

MONDAY, April 2, 1951.

Resolved,—That a Special Committee be appointed to consider Bill No. 79, An Act respecting Indians; with power to send for persons, papers and records and to report from time to time; and that the said Committee consist of members to be appointed later, and that Standing Order 65(1) be suspended in relation thereto.

MONDAY, April 2, 1951.

Ordered,—That Bill No. 79, An Act respecting Indians, be referred to the said Committee.

FRIDAY, April 6, 1951.

Ordered,—That the following Members comprise the Special Committee on the Indian Act, as provided for in the Resolution passed by the House on Monday, April 2nd, last—Messrs. Applewhaite, Ashbourne, Black (*Chateauguay-Huntingdon-Laprairie*), Blackmore, Blue, Boucher, Brown (*Essex West*), Bryce, Cauchon, Charlton, Diefenbaker, Fulton, Gibson, Harkness, Hatfield, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Noseworthy, Richard (*Gloucester*), Smith (*Queens-Shelburne*), Simmons, Valois, Welbourn, Whiteside, Wood.

THURSDAY, April 12, 1951.

Ordered,—That the said Committee be authorized to sit while the House is sitting.

Ordered,—That the quorum of the said Committee be reduced from 14 to 10 members.

Ordered,—That the said Committee be empowered to print, from day to day, 1,000 copies in English and 250 copies in French of its minutes of proceedings and evidence, and that Standing Order 64 be suspended in relation thereto.

Attest.

LEON J. RAYMOND,
Clerk of the House.

REPORT TO THE HOUSE

THURSDAY, April 12, 1951.

The Special Committee appointed to consider Bill No. 79, An Act Respecting Indians, begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That it be authorized to sit while the House is sitting.
2. That its quorum be reduced from 14 to 10 members.
3. That it be empowered to print, from day to day, 1,000 copies in English and 250 copies in French of its minutes of proceedings and evidence, and that Standing Order 64 be suspended in relation thereto.

All of which is respectfully submitted.

DON F. BROWN,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, April 12, 1951.

The Special Committee appointed to consider Bill No. 79, An Act respecting Indians, met at 11 o'clock a.m. this day.

Members Present: Messrs. Applewhaite, Ashbourne, Blackmore, Blue, Boucher, Brown (*Essex West*), Bryce, Cauchon, Charlton, Diefenbaker, Fulton, Gibson, Harkness, Hatfield, Jutras, Little, MacLean (*Cape Breton West and Victoria*) Murray (*Cariboo*), Noseworthy, Richard (*Gloucester*), Smith (*Queens-Shelburne*), Simmons, Welbourn, Whiteside, Wood. (25).

On motion of Mr. Jutras, seconded by Mr. Hatfield,

Resolved,—That Mr. Brown (*Essex West*), be Chairman of the Committee.

Mr. Brown took the Chair and thanked the Committee for the honour conferred on him.

The Chairman read the Order of Reference.

On motion of Mr. Jutras, seconded by Mr. Hatfield,

Resolved,—That a recommendation be made to the House to reduce the quorum from fourteen members to ten members.

On motion of Mr. Boucher,

Resolved,—That permission be sought to print from day to day one thousand copies in English and two hundred and fifty copies in French of the minutes of proceedings and evidence.

Mr. Whiteside moved,—That the Committee request permission to sit while the House is sitting.

After discussion the motion was adopted on division.

It was agreed that the Minister of Citizenship and Immigration and officials of that Department be heard at the next sitting.

Mr. Fulton moved,—That, in addition to other witnesses to be heard, the Committee should call and hear evidence from representative Indian delegates on their desires and opinions with respect to Bill No. 79; and that representative delegates be chosen after consultation with the Indians of the Maritime region, the Quebec and Ontario region, the Prairie region and the British Columbia region.

Mr. Applewhaite moved in amendment thereto,—That all the words after the word "that" in the first line thereof be struck out and the following substituted:

"the question of calling Indian witnesses be considered after the Committee has had a report of the conference of February 28, March 1 and 2, from the Minister and officials of the Department, together with the records of such conference, if available."

Mr. Fulton having raised a point of order that the amendment nullified the main motion, the Chairman ruled the amendment to be in order.

The question having been put on the said amendment, it was agreed to on the following division:

Yeas: Messrs. Applewhaite, Ashbourne, Blackmore, Blue, Boucher, Bryce, Cauchon, Gibson, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Noseworthy, Richard (*Gloucester*), Smith (*Queens-Shelburne*), Simmons, Welbourn, Whiteside, Wood. (19).

Nays: Messrs. Charlton, Diefenbaker, Fulton, Harkness, Hatfield. (5)

The question having been put on the main motion, as amended, it was agreed to on division.

On motion of Mr. Jutras, at 12.35 p.m., the Committee adjourned to the call of the Chair.

MONDAY, April 16, 1951.

The Special Committee appointed to consider Bill No. 79, An Act respecting Indians, met at 11.00 a.m. o'clock this day. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Applewhaite, Ashbourne, Blackmore, Blue, Boucher, Brown (*Essex West*), Bryce, Cauchon, Charlton, Diefenbaker, Gibson, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Noseworthy, Richard (*Gloucester*), Smith (*Queens-Shelburne*), Simmons, Welbourn, Whiteside, Wood.

In attendance: Hon. W. E. Harris, Minister of Citizenship and Immigration; Mr. D. M. MacKay, Director, and Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch; Mr. W. Cory, Legal Adviser, Department of Citizenship and Immigration.

Hon. W. E. Harris, Minister of Citizenship and Immigration, made a statement explaining how the representatives were chosen for the conference of February 28 to March 3, 1951.

Various representations made to the Department were read into the record.

Mr. Harris read the 1948 report of the Joint Parliamentary Committee on Indian Affairs and explained what action had been taken to implement that Committee's recommendations.

At 12.00 noon the Committee recessed for a few minutes. When the Committee resumed it was agreed that there be no further such recess.

The Minister completed his preliminary statement.

The question of calling Indian witnesses to present their views was again raised.

On motion of Mr. Gibson:

Resolved,—That the Committee proceed to the consideration of the Bill, clause by clause.

Clauses 1 to 3 were adopted.

Sub-clause (1) of clause 4 was adopted.

On sub-clause (2) of clause 4

Mr. Charlton moved: That the words "by proclamation" after the word *may* in line 18 be struck out and the following substituted therefor:

"by consent of the band."

At 1.00 p.m. the Committee adjourned to meet again on Tuesday, April 17, at 11.00 a.m.

E. W. INNES,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
APRIL 16, 1951.

The Special Committee appointed to consider the Indian Act met this day at 11.00 a.m. The Chairman, Mr. D. F. Brown, presided.

The CHAIRMAN: We will come to order, gentlemen, please. You have each been provided with a copy of the original Indian Act, which is being revised. May I request that you take very careful care of this publication because it is not replaceable. The ones we have here are the only ones that are available of the original Act, so please retain your copy.

The bill 79, which has been presented to the House, is also in short supply. May I therefore ask that you take good care of the copy that you now have. There are a few extra copies but if you would place your name on your copy and retain it I think it will be to your advantage later on. It is not thought that we could run off another printing for the committee.

Now, this morning we have with us the Honourable Minister of Citizenship and Immigration, who has administrative control of the Indian Affairs Branch. There was a discussion at the last meeting as to the conference which was held in Ottawa between the minister and the representatives of Indian organizations throughout Canada. Is it your pleasure now that we hear the minister?

Agreed.

Hon. W. E. HARRIS: Mr. Chairman, I would like to congratulate the Department of Indian Affairs on their having on this committee seven or eight members who served on the original Indian Affairs Committee. The number is surprisingly large. We will have quite a good representation on a similar committee in the Senate should this bill get that far and I am quite sure that knowledge so obtained by members when they served on the investigating committee will be of great help to us in these proceedings. May I congratulate you, sir, on being chosen again as chairman and I may say I am quite sure that your knowledge of this problem has justified that appointment.

I have looked over the proceedings of the old committee and as you know it concluded with certain recommendations. Before we deal with these I think it ought to be proper to say that the members of this committee represent about a third of the Indians in Canada. The population of the ridings represented on this committee runs between forty and fifty thousand out of a total of some 140,000. I am quite satisfied that the Indians are as adequately represented as any group may be on a special committee considering affairs of that group.

The Indian Affairs Committee, as its terms of reference indicate, was a committee to investigate the Indian Act and its administration and to make recommendations. Those recommendations were contained in the resolutions which came forward in 1946, 1947 and 1948, one of which I could state now, and that was the number of Indians employed in this department should be the greatest possible having regard to the reasonable requirements of the Civil Service Act. I have had a tabulation made of the 1,087 established positions in the Indian Affairs Branch. We have 127 Indians which represent something like 11.6 per cent, which is also precisely the population ratio with respect to whites in this country, so I think you will agree with me that in so far as we can we have been carrying out the wishes of the committee.

The recommendations of the committee are tabulated in a statement here, and if it is the wish of the committee to discuss them first to see what had been done, we will proceed that way before we come to a discussion of the conference, or as you wish. As a matter of fact, of course, the revision of the Act was based on the recommendations of the investigating committee and the records are available so that I need not go into them again unless the members wish to. What is the pleasure of the committee?

Mr. BLACKMORE: I think it would be a good thing to have those recommendations read into the record.

Mr. CHARLTON: Are they quite long?

The CHAIRMAN: Do you think it would take up too much time to read them?

Hon. Mr. HARRIS: Well, there are six pages of the final report.

Mr. APPLEWHAITE: If the printing of these proceedings could be done in time to get them back again so we could use them while the committee is in session they might just be printed, but if it is going to be three weeks before we get the printed record of these proceedings, we should get them in some other way.

Mr. GIBSON: Has the minister any comments to make on the recommendations or is it just a question of reading them?

Hon. Mr. HARRIS: I would attempt to show that we attempted to carry out the recommendations or to give reasons why we did not.

The CHAIRMAN: Would you like to read them?

Hon. Mr. HARRIS: Suppose we have them incorporated in the record and at a later time we could discuss them before we take up the bill itself.

The CHAIRMAN: Is that agreeable?

Carried.

Hon. Mr. HARRIS: Then we might come to the statement I made last year on the introduction of bill 267. As I pointed out the bill was not perfect and there would be continued study of the Indians affairs and amendments would be brought forward this session if it was thought desirable to do so. I want to repeat that assurance for the future, that not only will this committee make amendments to bill 79 but we shall have a few ready ourselves for presentation to the committee. I think that the Indian Act should have a continuing study so that there will be no longer, as the committee said, a lapse of twenty-odd years between committees on Indian affairs.

Some Hon. MEMBERS: Hear, hear.

Hon. Mr. HARRIS: So you can take it that what you do now is done for 1951 and that we will continue to study the Act. The representations which were made with respect to bill 267 were quite extensive. Correspondence was heavy and in addition to that, of course, we interviewed a great many of the band councils and the Indians themselves. The letters which came in were largely from Indians' organizations and some white organizations. They were all studied, and we have them tabulated in a booklet so that when the appropriate section of this bill is called I can read you all the objections which were made to the similar section in bill 267 and that might serve as the beginning of your discussions, perhaps, on that particular section. Some of them, of course, are out of date now because the objections have been incorporated in bill 79. As the session approached we thought it would be desirable to have a final consultation with the Indians as to the terms of bill 79 as soon as it was introduced, and for that purpose we called together 18 Indians and one white man for the purpose of discussing the Act after first reading. The persons who were called here were invited on the basis, first, of provincial representation,

secondly, their known activity on behalf of their people and thirdly to give adequate representation to other factors having to do with bill 79. I am quite sure that we could have doubled the numbers and had a better representation but the principle on which we acted was that every known association of Indians should be invited to come here, and in addition that there should be representations from the larger reserves who were not necessarily affiliated with provincial organizations. Now, I am prepared to put on record—I am sorry it was not incorporated as an appendix of *Hansard*, I had thought it was—a list of members who were invited and others who came and remained in the conference room and offered their opinions from time to time and discussed the sections of the bill. There were as a matter of fact 17 Indians in that group who had come along with the delegates in some cases, and others on their own.

The CHAIRMAN: You mean apart from the delegates?

Hon. Mr. HARRIS: Apart from the delegates. The persons who were invited can be incorporated in the record, I take it. They were as follows: We might take them by provinces:

From British Columbia, William Scow, Esq., Alert Bay, B.C., President, Native Brotherhood of British Columbia.

Dr. P. R. Kelly, Cumberland, B.C., Chairman, Legislative Committee of Native Brotherhood of British Columbia.

Daniel Manuel, Esq., Merritt, B.C., Chief, Upper Nicola Band, representing the interior Indians of B.C.

Andrew Paull, Esq., North Vancouver, B.C., President, North American Indian Brotherhood.

You will see that we had the two organizations and the one mainly to represent the interior Indians.

From Alberta, we invited the president and secretary of the Indian Association of Alberta, Mr. James Gladstone, Cardston, Alta., President, Indian Association of Alberta, from the Blood Indian Reserve, and John Laurie, Esq., Calgary, Alta., Secretary, Indian Association of Alberta, a teacher at Calgary, a white man, who has been for some years secretary of the association and who does most valuable and useful work on behalf of the Indians of that province.

From Saskatchewan we invited the representative of the Queen Victoria Protective Association from the northern part of the province by the name of Thomas Favel, Esq., Poundmaker, Sask., Chief, Poundmaker Band.

We invited John B. Tootoosis, Esq., Cutknife, Sask., President, Union of Saskatchewan Indians, who is the grandson of Chief Poundmaker.

Joseph Dreaver, Esq., Duck Lake, Sask., Chief, Mistawasis Band, who is one of the more advanced Indians of that area and who also represents, as I recall, Treaty No. 7.

From Manitoba, we invited George Barker, Esq., Hole River, Man., Chief Hollow Water Band, who represents Treaty No. 5.

John Thompson, Esq., Pine Falls, Man., President, Indian Association of Manitoba.

From Ontario we invited representatives from the Six Nations at Ohsweken and they nominated their secretary Arnold C. Moses, Esq., Ohsweken, Ont., Secretary, Six Nations Band Council.

We invited Sam Shipman, Esq., Walpole Island, Ont., Chief Walpole Island Band.

We invited Lawrence Pelletier, Esq., Manitowaning, Ont., who represents the Indians of the Manitoulin Island Unceded Band, and Gus Mainville, Esq., from Fort Frances, Ont., President to represent the Indians covered by Grand Council Treaty No. 3.

We might have had greater representation from Ontario but we did cover all the areas and we think it was adequate representation.

From Quebec we invited a representative from the Caughnawaga Reserve and they nominated someone who eventually could not come and a gentleman by the name of Joseph Beauvais, Esq., Caughnawaga, Que., came, a Councillor of the Caughnawaga Band Council.

We also invited Thomas Gideon, Esq., from Restigouche, Que., Chief, Restigouche Band.

From the Maritimes we invited Stephen Knockwood, Esq., Micmac, N.S., who is Chief of the Shubenacadie Band.

I should say I omitted Gilbert Faries, Esq., from Moose Factory, Ont., Chief, Moose Factory Band, who is a veteran of the late war and represents the Indians of Treaty No. 9.

Now, we did have representation from all but three of the treaties, those being the northern parts of the Yukon and so one where we could not get adequate representation. We also balanced our delegations so that there would be a proper denominational representation in discussing school questions. There were 9 Indian Protestant delegates and nine Indian Roman Catholic delegates. We think, as I said, these persons did adequately represent the persons they were sent here to represent. Every one of them had appeared before the Indian Affairs Committee in the years 1946 to 1948 and were familiar with what they wanted at that time and what they were trying to obtain in the meantime.

With them we went through Bill 79 section by section. I, along with the deputy minister, read every word in that bill to them and paused at the end of each subsection, and, if there were no discussions, proceeded. If there was discussion we continued until the discussion was ended. Results are those which have been set out in the appendix to *Hansard* of some weeks ago in which we have listed the objections or discussions on every section and have pointed out the result overall, the overall results being that, of 124 sections, 103 were unanimously supported, 15 more sections had some opposition but not a majority opposition and only six sections were opposed by the majority and of these two were unanimously opposed.

In the course of the discussion I promised the Indians that I would bring to the attention of this committee and the House their statements, their objections, and that I would indeed argue on occasion as they would expect me to argue their case. I am prepared to do that when we come to the proper section.

Mr. BLACKMORE: I wonder if the chairman could give us the date of the *Hansard* referred to.

The CHAIRMAN: It was the second reading of the bill.

Mr. APPLEWHAITE: March 16th.

The CHAIRMAN: We have here a summary of the proceedings of the conference with the minister. The conference was held from February 28th to March 3rd. If it is your pleasure we will now have the summary distributed so that the members will have it for their own use.

Agreed.

Carried.

Hon. Mr. HARRIS: There is affixed to this report of the conference Schedule A, giving the names of those who have attended, such as I have indicated, and Schedule B being a list of the sections by numbers which were approved or had objections to or were unanimously approved. They will be ready reference for our work.

There was some discussion as to whether this should be an annual event or whether we would invite these persons to attend that frequently before the Minister of the Department. I suggested to them that it would be desirable to

have a reasonable time to work out the provisions in the Act and I said I should think that two years would represent a reasonable period and that I doubted if any further conference would be held until that time had elapsed. I assured them that in the meantime if they had complaints they had only to write to me and the matter would be attended to and that at the expiration of some period such as that we would reconvene the conference for the further consideration of the terms of the bill.

Now, a few statistics about the arguments. We sometimes meet the argument with respect to the bill, that the minister's authority or the authority of the Governor in Council is too extensive. That is a matter of opinion which the committee will want to consider, but for your information under the Indian Act the minister is stated to have power in seventy-eight different cases. Under bill 267 that was cut down to fifty-eight. The powers of the Governor in Council under the Indian Act were thirty-nine in number. They were cut down to thirty-three in bill 267 and to twenty-six in bill 79 so that we are, I hope, making an improvement in that respect. There is one representation that I should put on the record now carrying out that promise I made and I would like to read it. This is from the Six Nations Iroquois Confederacy in the form of a letter to me dated April 10, 1951.

SIX NATIONS "IROQUOIS" CONFEDERACY
GRAND RIVER COUNTRY

Ohsweken, Ontario, April 10, 1951.

Hon. W. E. Harris,
Minister of Citizenship and Immigration,
Ottawa, Ontario.

Hon. Sir:

Herewith please find enclosed copy of letter to Secretary of State Bradley.

The Confederacy of the Six Nations, known throughout History, as Allies of Great Britain, who existed long before Canada ever became into being, and this same Iroquois people have ever proven faithful in all wars for Great Britain. And now to be coerced into this shameful legislation which is confiscatory in every turn and altogether contrary to sacred promises and Treaties.

The Chiefs of the (Iroquois) Confederacy are now more solidified in demanding that this Indian Act which was never accepted by the Chiefs, only by this small minority, of which has been tutored by the Indian Agent. The Confederate Chiefs do not wish to disgrace Canada before the World, since we the Iroquois were highly instrumental that this continent is English speaking.

Yours truly,
"ARTHUR ANDERSON"

The letter to the Secretary of State reads as follows:

SIX NATIONS "IROQUOIS" CONFEDERACY
Grand River Country

Ohsweken, Ontario, April 10, 1951.

Honourable Gordon Bradley,
Secretary of State,
Ottawa, Ontario.

Hon. Sir:

The Confederate Chiefs of the Iroquois Confederacy of the Grand River, Canada, by resolution duly passed and approved on April 3rd, 1951.

Desire to inform the Canadian Government that, the Chiefs together with all members of the Confederacy refuse to accept the new Indian Act as having the legal authority of Law over the Six Nations.

The Chiefs have never relinquished or surrendered their Sovereignty. That they were a Sovereign Nation or people is confirmed by the fact that they entered into Treaties with different Nations coming into North America from Europe, as the Dutch, the French and the English.

Yours truly,

"ARTHUR ANDERSON"
Secy. of Confederacy.

A similar representation, I think, was mailed to all the members on behalf of the Indians of the Oka, Saint Regis, and Caughnawaga group who belong to the Six Nations Confederacy. That representation is dated September 10, I believe it was, although it did not come in the mail until November and I think we ought to include a copy of it in the records and I will have that done with your approval.

Agreed.

April 10, 1951.

To the Members of The Parliament of Canada,
Ottawa, Ontario.

Gentlemen:

We are chiefs of the St. Regis tribe of Indians who acknowledge the Six Nations Confederacy as the true and lawful government for our people. We wish to again express our position in regard to the proposed revision of the Indian Act. We have written to the Government before we have sent delegates before the Joint Committee hearings and various departments of the Government in protest to any legislation which would have bad purposes and bad results.

We wish to assure this Parliament that we who have been mis-called hereditary chiefs are not just a few dissatisfied, fanatic reactionaries as we have been called in the press, our opinion, presented here, are the opinions of a large majority of our people. It is hard for us to prove this claim, if you should doubt our word, but please consider that we live on the reservation with our people, as one of them, we can talk with our people in our own language and we know what they think. We are not paid by the Government nor by anyone else for our services and are not afraid to speak the truth.

We have stated our position before. We have been answered by a sweeping statement that while we live in Canada we must obey Canadian laws. We challenge the Government of Canada to show to the satisfaction of an unbiased tribunal that we live in Canada. We can point to the absolute title that we have enjoyed over our lands from time immemorial. We have found no event in our history where a transfer of title was legally made. We have learned that you can take possession of our lands if we give them to you, or if you conquer us in battle, or if you buy them from us. None of these have you ever done. No, the lands remaining to us are ours alone. How then can you make laws for lands not your own?

And how can we be true Canadians and still be under an Indian Act no matter how progressive? The very law that calls us Canadians differentiates between us and the rest of Canadian subjects. We have been dominated by a larger government against our will. Where a people must obey laws enforced by officials who are not responsible to the people for the way they handle their office, there is a great unrest, discontent, and the seeds of social downfall. The nation who forces its laws upon an unwilling people will lose face in its relations with other nations and such evils will surely be found out.

The Royal Proclamation of 1763 and General Gage's Judgment were the law of the land at the time of Governor Simcoe. Many of this governor's letters expound the principle of Indian independence. When did we lose the independence that we had then? How did the control over our own affairs pass out of our hands? We have bitter memories of that day in 1899 when a puppet government was introduced on our reservation. Some of our people still live who saw the arrest of our chiefs, the council presided over by armed government men, and the shooting down of one of our men when he demanded the release of our old chiefs. The bitterness engendered then has not been favorable to a ready acceptance of a law-from-outside. It is an established concept that governments should derive their just powers from the consent of the governed.

Let us recommend rather a plan whereby your national honour may be saved and at the same time have the co-operation and participation of the Indians. We realize that it would not be right for us to reject entirely a matter which may have for its purpose the betterment of the Indians but which has the unchangeable opposition of the majority of the Indians. We think these are more acceptable to our people.

1. Selection of the Indian Agent should be in the hands of the Indian and should be responsible to the Indians for the way he handles his office.

2. Recognize the Indian "Life Chiefs" supporters as being a legitimate political party on the reservation. By proving that they have popular support, they are to be returned to their former position.

3. Make a study of treaty obligations with a view to working out a program for fulfilling the letter and spirit of such treaties and for distribution of such information gained among the various agencies of the government, for their guidance in performing their duties among Indians.

We pray that the foregoing statement will find the honoured members of Parliament ready to respond with kindness and mercy, and above all, justice.

Life Chief Moses Thompson St. Regis,
P.O. Glen Walter, Ont.

Caughnawaga Reserve,
Province of Quebec,
September 9, 1950.

To The Honourable Members of the Senate and House of Commons:

We, the Councillors and Life Chiefs of Caughnawaga, St. Regis and Oka Reserves duly assembled on this 9th day of September in the Year of Our Lord 1950, at a Grand Council to discuss the Merits of the proposed new "Indian Act" have found that a large number of the clauses are detrimental to the best interests of the Indians.

Since the old saying still holds good—"One bad apple in a barrel will eventually spoil all the rest if it is not removed in time"—we hereby register our protest that we cannot accept the bill, as it is an entirely negative one and apparently designed to govern an inferior and subordinate people and to keep them inferior and subordinate. It also tends to destroy the racial identity of the Indian and submerge it out of sight.

If this bill be passed in its present form, the new Indian Act will be the most bureaucratic and dictatorial legislation ever imposed on mankind.

The Honourable Mr. Walter Harris, Minister of Citizenship and Immigration, stated June 21 last that the Indian policy is the integration of the Indians. We protest against this policy of Mr. Harris, as it is our desire to remain Indians today and in the future. We are not ashamed but proud of

being Indians. You would place us in the position where we would have no equality under the law but would be at the beck and call and under the control of your officials on the Reserves.

We trust you will never let it be said that the Parliament of Canada passed an Act condemning the whole Indian population of Canada to dictatorship by forcing upon them citizenship whether they want it or not, with no choice as to which Government they shall belong.

We Indians do not wish to become Citizens of your Government or any other Government; we are loyal to our Indian form of Government, and we want to be free to enjoy our liberty as guaranteed to us by our Great Constitution of the Six Nations.

We therefore once again demand the restoration of our primordial rights, the honouring and fulfilment of Treaty obligations, and the recognition of our right to exist as a Sovereign Nation by virtue of our Treaties.

We would ask you kindly to take this opportunity to study and see for yourselves the Treaties and Rights of the Six Nations to exist as a Nation, and also to study our Brief on file in the records of the Joint Committee. Your co-operation and aid towards the abolition of the bill creating the new Indian Act, which includes the Indians of the Six Nations, will be greatly appreciated. We sincerely hope you will realize that to us Six Nations Indians, there can be only one Government for us—"The Six Nations Government"—forever.

Let us live in peace, recognize our Rights and form of Government as provided in Treaties. Take your Officials and Police Force off our Reserves, and let us take over the Government and Policing, in which event you will be in a position to say you have given us Equality.

By virtue of our Treaties, we demand of the Government of Canada the proper adjustment of Treaty obligations and the recognition of our privileges and rights as a Sovereign Nation capable of governing and making laws for ourselves. In dealing with these treaties between Great Britain and the United States, both Great Britain and the United States have acknowledged that the Six Nations were an Independent People.

The Supreme Courts of both Countries furthermore recognized those Treaties as inviolable.

In the life of Sir Frederick Haldimand, *Making Canada* Vol. 3, Page 356, it is found that the question of the Sovereignty of the Indians was very embarrassing, inasmuch as it would have been impossible under any interpretation of the laws of the Nations for Great Britain or the United States to establish a prerogative in themselves to enforce the Laws of the White Man upon the owners of this Country. To make this admission still stronger, that article was amplified by amendment of 1796—Mallory Page 607, which provided that no treaty already made or to be made with another Nation or with any other Indian Tribe should be construed as denying those Tribal Rights.

We cannot and will never approve of the Bill for a new Indian Act by virtue of the existing Treaties enumerated herein:

1. Treaty of Peace and Friendship, 1784: In this Treaty will be found the statement that Indians are not Citizens or subjects of any country, but are a Nation in themselves.
2. Treaties of 1759 and 1791: King George III is the absolute Protector of the Indians, and it is absolutely forbidden to purchase or molest Indians.
3. Treaty of New York, 1774.
4. Jay Treaty, 1776: No boundary line for Indians as Indians are not Citizens of either Canada or the United States.
5. Treaty of 1794 confirms the Sovereignty of the Six Nations.
6. Northwestern-Anglo Treaty, 1873.

7. Grant of King Louis XIV, 1680.
8. General Gage's Judgment, 1762.
9. Imperial Proclamation, 1766.
10. Royal Proclamation, 7th October, 1763.
11. Treaty of Ghent, Article 9, to cease hostilities and to restore to the Indians their possessions, rights and privileges—not complied with.
12. Treaty of 1754.

We look to you to safeguard our interests and not treat us as you have in the past.

SIGNED IN COUNCIL IN THE PRESENCE OF THE BANDS IN COUNCIL

Mike T. Montour,
John Woodland,
Constant Albany,
Joe Martin,
Eddie Delaronde,
John Diabo,
Matthew Lazare,
Caughnawaga Life Chiefs.

Peter Mitchell,
Dominic Cook,
Peter White,
James Jacobs,
Peter David,
Joe Mitchell,
Moses Thompson,
John C. Jacobs,
Life Chiefs of St. Regis.

Hon. Mr. HARRIS: I think I have covered all the general material and the minister and the officials of the department are available now to, I presume, explain the bill and to refer to the representations which have been made with respect to it as we come to each section in turn.

The CHAIRMAN: I thank you very much, Mr. Minister. We appreciate your coming here and giving us this preamble.

Mr. SIMMONS: Mr. Chairman, could we know the reasons why there were no delegates invited from the Yukon or Northwest Territories while practically all of the other provinces were represented?

Hon. Mr. HARRIS: The reason was that no one from there had taken part before in the proceedings of the special committee and we thought, in no way slighting the Indians of the Northwest Territories, it would be better to have those persons who had made a study of this problem before rather than have a great many who could not contribute much to the conference. I should add some of the gentlemen who were there have been before the government for upwards of thirty years now and have a wide knowledge of this problem and we did want to get persons who could discuss the subject with wide knowledge.

Mr. CHARLTON: This morning, are we not going to consider the proceedings and recommendations of the past committees?

The CHAIRMAN: Is the intention to proceed with the recommendations this morning?

Hon. Mr. HARRIS: It is a question of convenience to the committee. It is desirable to know what the recommendation was. We can either read it now or incorporate it in the proceedings and when it is available in that form we can go over it.

The CHAIRMAN: I thought we had discussed it before and we agreed that it was to be put in the minutes. Whatever your pleasure is, please indicate.

Mr. BLACKMORE: All things being considered, I fancy it would be better to read it now so we will have it before us.

The CHAIRMAN: Is that agreeable to the committee?
Carried.

Hon. Mr. HARRIS: By way of explanation, the 1946 and 1947 recommendations were in many cases administrative recommendations and were carried out during those years so that when the 1948 committee met to make its final report it incorporated in the report some remnants of the previous recommendations of 1946 and 1947 which they thought were still a matter of concern. If we take the 1948 report—the long one and most carefully considered one—we will probably cover all the factors contained in the previous recommendation. This is known as “Recommendations of the Special Joint Committee of the Senate and House of Commons.” This is the fourth report dated June 22, 1948 and it begins as follows:

Many anachronisms, anomalies, contradictions and divergencies were found in the Act.

Your committee deems it advisable that, with few exceptions, all sections of the Act be either repealed or amended. The Law Officers of the Crown would, of course, need to make other necessary and consequential revisions and rearrangements of the Act which, when thus revised, should be presented to Parliament as soon as possible, but not later than the next session.

Your Committee recommends that immediately Parliament next reassembles a Special Joint Committee be constituted with powers similar to those granted your Committee on 9th February last and that there be referred to the said Special Committee the draft Bill to revise the Indian Act presently before the Law Officers of the Crown.

That was not carried out because, as you will recall, while there had been work in private in the committee on the draft bill the 1949 general election intervened and we found ourselves forced to postpone this until 1950 and to proceed with the revision of the Act.

All proposed revisions are designed to make possible the gradual transition of Indians from wardship to citizenship and to help them to advance themselves.

In order to achieve these objectives, your Committee recommends, in addition to other recommendations hereinafter set out,

- (a) That the revised Act contain provisions to protect from injustice and exploitation such Indians as are not sufficiently advanced to manage their own affairs;

Now it is true that in the new Act there are some extended provisions for self-government and self-sufficiency of the Indian yet, having in mind this recommendation, we have retained control of matters so that backward Indians should have the continued protection and management of his affairs.

- (b) That Indian women of the full age of 21 years be granted the right to vote for the purpose of electing Band Councillors and at such other times as the members of the band are required to decide a matter by voting thereon;

We have carried that out and it is in the bill.

- (c) That greater responsibility and more progressive measures of self-government of Reserve and Band affairs be granted to Band Councils, to assume and carry out such responsibilities;

As I said before we have extended those privileges and we will point them out in due course. They are largely contained in sections 64, 66, 81 and 82.

- (d) That financial assistance be granted to Band Councils to enable them to undertake, under proper supervision, projects for the physical and economic betterment of the Band members;

This, as I take it, has to do with projects which would be to the advantage of the band council. We have been working on a revision of our regulations with respect to the revolving loan fund of \$350,000, which is set out in one of the sections of the bill. We believe the recommendation is wise and if we can loan the money to band councils for what under other circumstances would be municipal purposes, it would be to the advantage of the band. We propose to embark upon that policy as soon as this is passed.

- (e) That such Reserves as become sufficiently advanced be then recommended for incorporation within the terms of the Municipal Acts of the province in which they are situate;

It was, I believe, the opinion of the committee that ultimately Indian reserves would be incorporated as municipalities and take their place not under the federal government but under the provincial governments in those cases. There have been efforts along that line and in particular there is one band which has indicated a desire to have this proceeding with respect to it, and the matter is being pursued now.

There is no provision in the bill for this particular recommendation because the law officers of the Crown felt that you could not make reference in the Indian Act to the municipal incorporation of an Indian band in that being a municipal matter it would be between the band and the provincial government. The parliament of Canada cannot legislate upon it because it would thereby invade the provincial field.

- (f) That the offence and penalty sections of the Indian Act be made equitable and brought into conformity with similar sections in the Criminal Code or other statutes;

All penalty sections have been studied and revised—in fact a good many have been eliminated—and we think they are equitable and just in every case.

- (g) That the Indians be accorded the same rights and be liable to the same penalties as others with regard to the consumption of intoxicating beverages on licensed premises, but there shall be no manufacture, sale or consumption, in or on a reserve, of 'intoxicants' within the meaning of the Indian Act;

We interpreted this to mean, as the committee recommended, that Indians might be free to drink in public places—that is beer parlours and cocktail lounges where they are in existence in the various provinces.

That has been carried out in sections 94 to 96 of the bill with one important proviso—that this can only occur at the request of the lieutenant governor in council in such province. As you will see, when we come to those sections, there is a very divided opinion among the Indians on those sections.

- (h) That it be the duty and responsibility of all officials dealing with Indians to assist them to attain the full rights and to assume the responsibilities of Canadian citizenship.

We agree with that. It is a matter of administrative practice and instructions have been given to that effect.

Your Committee was given "authority to investigate and report upon Indian administration in general" and, in particular, certain other matters, viz:—

1. Treaty Rights and Obligations

Your Committee recommends that a Commission in the nature of a Claims Commission be set up, with the least possible delay, to inquire into the terms of all Indian treaties in order to discover and determine,

definitely and finally, such rights and obligations as are therein involved and, further, to assess and settle finally and in a just and equitable manner all claims or grievances which have arisen thereunder.

As I pointed out on second reading of the bill we have not accepted this recommendation. There are several reasons. The most important from my personal standpoint is that in this matter there should be some initiative by the Indian. It would seem that if he has a right which he feels is being abrogated it is the Indians who should protest, and we should not take the position of advocating protest unless it is justified.

For example, and I know this will be the subject of discussion later on and this is very general, there are Indians in the western provinces who are quite certain their treaty rights have been abrogated respecting game laws and yet, having in mind certain advantages that would obtain by conservation methods or assistance by dominion and provincial governments, they are not necessarily protesting against the loss of certain rights because they are compensated for them. That is why we think it should be the Indian who makes the decision of determining whether or not he should have a claim.

We also found the difficulty that faced an Indian or band council in enforcing their rights was largely one of money. The difficulty was further enhanced by the fact the band council cannot use its moneys to finance a lawsuit and they take up collections among the members to see that one who commences an action should have fees and expenses. We have provided in the bill an omnibus clause whereby the band council can spend its moneys for anything that will be in the interests and for the benefit of the band. That clause, which was not in the old Act, may permit the expenditure of band funds for lawsuits, should they be for the purpose of enforcing rights the band feels are being abrogated.

I know there is an opinion on the other side, and the committee recommended we should appoint something in the nature of a claims commission and invite witnesses to argue before it whether this or that treaty had been violated, and make an effort to assess damages and so on. However, we have courts in Canada for that purpose and our courts are specially trained to make decisions with respect to legal points and the assessment of damages should they be called for.

Under those conditions we feel the Indian should be encouraged to sue the government if he feels he has been ill treated but that he should sue the government through the normal courts, because it is our desire that he should become acquainted with all our practices, even that of having lawsuits, and he should integrate himself into our community at least to that extent.

2. Band Membership

To replace the definition of "Indian" which has been statutory since 1876, there must be a new definition more in accord with present conditions. Parliament annually votes moneys to promote the welfare of Indians. This money should not be spent for the benefit of persons who are not legally members of an Indian Band.

Your Committee believes that a new definition of "Indian" and the amendment of those sections of the Act which deals with Band Membership would obviate many problems.

Your Committee recommends that, in the meantime, the Indian Affairs Branch should undertake the revision of existing Band Membership lists.

We have done that. We have provided in sections 6 to 15 of the bill that there should be a new definition of "Indian" and that there should be a rather careful means of appeal from any decisions which have been made. We provide that band lists, which have been in the course of preparation since this recom-

mendation and which are now practically complete, should be posted in the band council building or in the usual places where the band assembles, and that that list should be on display for a period of six months during which time appeals can be taken by any member of the band or band council to add names to the list or delete names from it.

The decision is made by the registrar who will be one of the officials from the department and within three months after that, an aggrieved person or the band council may take appeal from his decision to a judge of the county or district court—presumably the one nearest to the band headquarters, but not necessarily so, e.g., should there happen to be a vacancy in that appointment.

In this way in the course of another year or something like that we will have for the first time a more or less complete list of Indians. In so far as the lists are confirmed they will not then be subject to change except for fraud and of course there will be continuing additions and deletions by reasons of marriage, death, and things of that sort.

3. Liability of Indians to Pay Taxes.

Your Committee recommends the clarification of those sections of the Act which deal with the exemption from taxation of an Indian's real and personal property on a reserve.

Your Committee, however, is of opinion that Indians should continue to pay taxes on any income earned by them off, i.e., away from their reserve, even though they do reside on or have an interest in a reserve.

Now we have clarified that section dealing with taxation on real and personal property but we have continued the law as it is stated here—that is that the Indian should continue to pay taxes on his earnings off the reserve. That section is 86. It does not cut down any of the rights the Indian was supposed to have under the old Indian Act; it continues them as they were—which has been a disappointment to the Indians. They feel they are entitled to a greater exemption than they now have.

4. Enfranchisement of Indians both Voluntary and Involuntary.

Revised Indian Act should, in the opinion of your Committee, contain provisions to clarify the present rules and regulations regarding enfranchisement.

We have redrafted both the voluntary and the involuntary enfranchisement sections and they contain some new provisions which I think the committee will be interested in—you may or may not agree with them.

5. Eligibility of Indians to Vote at Dominion Elections.

As part of the education and preparation of the Indian to assume his place in the Canadian body politic, your Committee recommended, on May 6 last, that 'voting privileges for the purpose of Dominion elections be granted to Indians on the same status as electors in urban centres'. This is a matter which, in the opinion of your Committee should be referred to a special committee on the Dominion Elections Act, with a view to early implementation of the recommendation.

It is realized that many Indians are not anxious to have or to use the franchise, under the misapprehension that, if they do exercise it, they will lose what they considered their rights and privileges.

Many Indians who do not have the right to vote at Dominion elections do pay taxes on income earned away from the reserve, together with sales tax, gasoline tax, excise tax, et cetera. This is taxation without representation.

It is the opinion of your Committee that it would encourage Indians, particularly the younger ones, to interest themselves in public affairs, if they were given the privilege already recommended. Your Committee is further of the opinion that the public generally would be given a better appreciation of Indians affairs.

We have carried that recommendation out by providing that the Indian may vote as it states here with the same status as electors in urban centres. The committee may not agree with that. They may not have in mind the waiver of taxation exemption for personal property which have stipulated for in the Dominion Election Act, but we took it that Indians should not be in a preferred position over a white man in voting and we have so provided. We have also provided as we have said here, for Indians who do not want to vote because they fear they will lose their privileges and rights. The vote is fully voluntary and if an Indian feels he might lose some privileges and rights he need not vote. I have more than once stated that there is nothing in the Dominion Elections Act which would take away from him any rights other than those granted by the Indian Act with respect to taxation exemption.

I have no doubt though, that members of the committee will have received representations that the tax exemption privileges are a matter of treaty rights. We are not of that opinion. The tax exemption privileges are conferred by the Indian Act, a statute, and not a treaty. There is this qualification. The Indians of British Columbia assert that because of section 13 of the terms of union whereby British Columbia entered Confederation with Canada there is a provision which states they were entitled to treatment not less favourable to that accorded to them before Confederation. They allege that section does confer tax exemption upon them because they had tax exemption prior to Confederation. There may be something in that claim. They are now proceeding with an action to assert that right and if they are successful it is possible that we will have one part of our Indian population with greater rights than another, but of course, these things work out. In the meantime we have decided that an Indian may vote if he signs a waiver of personal property taxation exemption.

6. Encroachment of White Persons on Indian Reserves.

Your Committee recommends that the revised Act contain provisions to prevent persons other than Indians from trespassing upon or frequenting Indian reserves for improper purposes.

That has been carried forward in the bill—I have forgotten at the moment what the section is.

7. Operation of Indian Schools.

Your Committee recommends the revision of those sections of the Act which pertain to education, in order to prepare Indian children to takes their place as citizens.

Your Committee, therefore, recommends that wherever and whenever possible Indian children should be educated in association with other children.

The committee understand of course that this provision was one which all depended upon the good will of the municipal school boards and provincial legislatures. There has been a remarkable increase in the number of Indians attending non-Indian schools since that time. We have not received any serious objection to that being done in any case where we have approached a school board. Some of them have turned down our requests, it is true, but there has not been much, if anything, in the way of discrimination. The requests that are refused occasionally are for reasons such as lack of accommodation and matters of that kind. We think as time goes on there will be an increase in the number of Indians attending public schools and other types of non-Indian schools.

8. Social and Economic Status of Indians and Their Advancement.

Your committee recommends that the Government consider the advisability of granting a pension to aged, blind, or infirm Indians. This is in addition to recommendations previously made with regard to the social and economic advancement of Indians.

We have, as you know, increased the allowance for aged Indians from \$8 to \$25 per month and we have made a census of blind Indians and, in fact, we do through the relief item maintain blind and infirm Indians—perhaps not on the standard of the old age allowance but at any rate they are reasonably well looked after. When we consider the limit of the requirements of these people as a result of the census we made we will be in a position to decide what should be done for them.

9. Indian Administration in General.

In 1946 and again in 1947 the Joint Committee on the Indian Act made recommendations with regard to administrative improvements which could be effected without the revision of existing legislation and which, when put into effect, would remove some of the causes out of which arise grievances and complaints of many Indians.

There are still some 'administrative improvements' which your Committee deems advisable.

Your Committee, therefore, again recommends that the administration of all aspects of Indian affairs be placed under one ministerial head.

Your Committee reiterates the recommendation made by the 1947 Joint Committee on the Indian Act, viz:

10. The Director of the Indian Affairs Branch . . . should be named a Commissioner who shall have the rank of a Deputy Minister and shall have at least two Assistant Commissioners of whom one should be a Canadian of Indian descent.

We have continued to try to improve our administrative practices and I am quite sure there have been good results in the past three years.

With respect to the recommendation about having a separate ministerial head I presume the committee has been responsible for my appointment and I am grateful to it for that. The Indian affairs branch is now linked with Immigration and Citizenship and we think it is a good combination of branches of departments which cover persons who require assistance of the government to attain citizenship, and for that reason I think the committee's recommendation has been carried out.

The further recommendation that the director of Indian affairs have the rank of deputy minister has not in fact been carried out to that extent, but section 3, I think it is, confers upon the director of Indian affairs certain powers of authority which I think will be agreeable to the committee.

Mr. BLACKMORE: The matters we have taken up until the present time have been rather exhausting and I wonder if it will be in order for us to take a short recess in which to stretch our legs.

The CHAIRMAN: What is the wish of the committee? Would a five minute recess be agreeable?

Agreed.

Hon. Mr. HARRIS:

10. Parliamentary Inquiries:

Since 1867 there have been only two parliamentary inquiries into Indian affairs, each of which was very narrow in scope.

I could add that the last one was not narrow in scope.

One in 1930, dealt with Bill No. 14, which contained amendments with regard to the adoption of the elective system of Chiefs and Councilors; the other, in 1926, was a Joint Committee which inquired into the claims of the allied Indian tribes of British Columbia.

Your Committee recommends that the rules of the House of Commons be amended to provide for the appointment of a Select Standing Committee on Indian Affairs.

In the opinion of your Committee such a Committee will be necessary for a few sessions at least, to consider and report upon the working out of any Indian Act and regulations framed thereunder.

Your Committee considers a lapse of more than 20 years without parliamentary investigation too long to permit of that good administration of a Branch or Department of Government which deals with such human problems as Indian Affairs.

As I said a short while ago, we are in agreement with that recommendation. We have not, however, carried out the recommendation for the appointment of a select standing committee on Indian affairs. It may be a matter of choice for the future but I do think, as I said before, that this Act might have a fair trial for a couple of years and a committee might be appointed then and consider not only the administration but certainly there will be amendments by that time, and then if in the light of that consideration that committee feels like recommending a select standing committee it would be a matter for the House to decide upon then.

No. 11, Advisory Boards:

Your Committee recommends that the Government consider the advisability of appointing such Advisory Boards or Committees as, from time to time, are deemed necessary for the carrying out of provisions of the Indian Act.

I made a study of the purpose of the recommendation which is contained in a number of representations from various organizations. I gathered the intention was to have the assistance of public spirited citizens in smoothing the way for the Indian and the community in which he resides for stimulating perhaps the arts, sciences, and craftsmanship and for acting generally in some kind of liaison sphere between the white population and the Indians.

We were not able to conclude that we should do that although we undoubtedly require the assistance of others in improving the lot of the Indians, but when you consider that to set up an advisory board it must have some definite purpose and in doing that it seemed to us that you might conceivably run into difficulty in the administration of the Act. After all, the board might have powers of decision and you would thereby be transferring to them some portion of the administration of the Act. In my correspondence with persons who have recommended this board, in more concrete form I enquired of them precisely what they thought the board would do and it was the opinion of many that they would act as a check or as inspectors, or something of that nature with respect to the Indian agent and his relation with the band. I must be frank in saying that I have rejected those representations on what I considered was the best of grounds namely, that the check on the Indian agent is with this committee or the House of Commons, that the minister in

charge of the department is obliged every year to defend the actions of his department in parliament and in fact I have suggested somewhat facetiously perhaps that the members of the House are paid to act as an advisory board and as a serious check upon the activities of their servants and that I thought that the House of Commons would be continually critical of all forms of administration and in that way we would have as good a check on the minister and his department as can possibly be had.

Now, that may not commend itself to the persons who advocated this and they may have had other ideas that I have not described but for the moment at least we have not decided on an advisory board. If the committee wants to discuss the matter and elaborate on it, I would only be too glad to hear what is said.

No. 12. Other Cognate Matters:

There are certain aspects of Indian affairs administration which, perforce, require co-operation between Dominion and Provincial officials, to bring about the future economic assimilation of Indians into the body politic of Canada.

Your Committee, therefore, recommends that the Government consider the desirability of placing on the agenda of the next Dominion-Provincial Conference, for consideration by the Provinces, the following matters:—

- (a) Education;
- (b) Health and Social Services;
- (c) Fur Conservation and Development and Indian traplines;
- (d) Provincial Fish and Game laws;
- (e) Provincial liquor legislation;
- (f) Validity of marriage solemnized by Indians, on Indian reserves, according to tribal custom and ritual.

This has not been done, not that we do not agree with the main purpose of the recommendation but we do agree that all these matters require continued consultation with the provincial governments and we have in fact been in consultation with them, but we did not do it formally at the Dominion-Provincial Conference because, as a result of the recommendations of the committee there has been, I am quite sure, a tendency to decentralize a little the administration of Indian Affairs and to find ways and means whereby the provinces and the dominion can co-operate to advance the interests of the Indians. There may be occasions on which there have been difficulties over some of the subjects mentioned here but I think I can state it as a fact that wherever those difficulties have arisen and discussions have ensued with the provincial governments there has been a genuine desire on their part and on our part to find a solution to the particular problem which, while observing the rights of the provinces and dominion in each case, will work out to the advantage of the Indian in almost every case. We are prepared to discuss that more in detail under each of the appropriate sections in the Act.

Your Committee realizes that the matters above enumerated are matters which, normally, are dealt with under provincial legislative powers. However, it should be possible to arrive at such financial arrangements between the Dominion and Provincial governments as might bring Indians within the scope of such provincial legislation, in order that there be mutual and co-ordinated assistance to facilitate the Indians to become, in every respect, citizens proud of Canada and of the provinces in which they reside.

I am sorry I did not notice that before but that sums up very well what I have to say.

Now, that concludes the 1948 recommendations which, as I said before, repeat some of the previous ones that they considered needed emphasis.

The CHAIRMAN: You have heard the recommendations made by the previous committee and the action taken by the government. Is there any discussion on those recommendations at the present time? Shall we proceed with the Act and discuss the recommendations and discuss how they have been carried out as we go on to various sections of the Act?

Mr. GIBSON: I think that is the way we would get the most work done. Agreed.

Mr. NOSEWORTHY: The main point before the committee on Friday was whether or not we should receive Indian representations before the committee, but I think the motion adopted on Friday was that we should first hear the minister and a report of his conference with the Indians and that the question of whether or not we receive Indian representation would be left until after we had heard the minister.

Now, is it your purpose to bring that question up at some later time?

The CHAIRMAN: Here is the motion: the question of calling Indian witnesses will be considered after the committee has had a report on the conference between the Indians and the minister and departmental officials together with the records of his conference, if available.

The question of hearing Indians is going to be open at all times. If there is a desire of the committee to summon any Indians here we will then consider the question; but as to holding out a carrot now in front of them that they are going to be brought down here, we do not think it is advisable.

Mr. NOSEWORTHY: I had a special request before the committee and I was wondering if this would be the opportunity to dispose of it, while the minister is here.

The CHAIRMAN: The minister will be here every session.

Mr. NOSEWORTHY: I am not anxious to have that settled immediately—

The CHAIRMAN: If there is any place in the Act where we think the Indians or any other person can be of any assistance to us in coming to a conclusion with respect to any section of the Act we will then consider the matter.

Mr. NOSEWORTHY: The only point is this: people have to be called and they will have to be given time to get here.

The CHAIRMAN: We will not summon them to be here at a time when we know they cannot be here.

Mr. CHARLTON: I would agree with Mr. Noseworthy. It was thoroughly understood Friday that we would hear the minister and the report of the meetings he had with the Indians. Now, I think, if we vary from that procedure it will be against the motion that was presented on Friday.

Mr. WOOD: I am of the opinion that we might now decide not to call the Indians and then in the future we might want to call them and would have to then go against our former decision.

Mr. NOSEWORTHY: I would say one thing, Mr. Chairman, that I will abide by the wishes of this committee, but I am not going to serve on this committee continually if it is decided that no Indians shall appear before it. I do not feel it would be fair to the Indians.

The CHAIRMAN: You were not on the committee before, Mr. Noseworthy. We have heard, as you know, a great many Indians who have come before us here and the records are available for anybody who would like to read them. We have heard Indians from coast to coast.

Mr. NOSEWORTHY: There was a request before the House when the Indians were called in that a representative committee of the House should meet the Indians at the time the minister and his officials met them but that did not meet with the wishes of the minister at the time. Those Indians came before the minister and his officials without any opportunity of coming before members of the committee and I think now that the committee in session should have the right, particularly if members of the committee want certain groups of Indians or certain representations from Indians—

The CHAIRMAN: I think we can go along with you on that. If we want any members of the Indians we are going to have them. That is what I understood from the motion.

Mr. JUTRAS: Mr. Chairman, I think it is obvious that the feeling of the committee on Friday was definitely to the effect that the great majority did not feel that the time was ripe to consider that question yet and for that reason the motion was carried that it should be left until a little later. It was not stated on Friday it would be Monday or the next sitting, we just agreed to postpone it.

Mr. NOSEWORTHY: That is all right if this question is not sidetracked entirely by starting to go over the Act.

The CHAIRMAN: As a member of the committee you have the right to bring in at any time a motion to hear an Indian on this or any subject.

Mr. NOSEWORTHY: If that is understood, all right.

Mr. CHARLTON: We agreed on Friday that we should hear the minister and a report of his meeting with the Indians before we proceeded to the study of the Act. Now, it would be very unfair if we started through the Act now, leaving aside a decision whether we were to hear the Indians or not.

The CHAIRMAN: What matter would you like to hear the Indians on? What section of the Act?

Mr. CHARLTON: If they are going to be here they should be here while the section is under discussion.

The CHAIRMAN: Well, it will be necessary for you to make up your mind on which section of the Indian Act you would like to hear the Indians.

Mr. CHARLTON: That is not the point, Mr. Chairman, at all. We passed a resolution Friday that this committee hear the minister's report and before this committee would go on from there we should decide whether we would hear Indian delegations or not.

The CHAIRMAN: He is still here.

Mr. CHARLTON: Yes, but you were going on to discuss the bill.

Mr. GIBSON: Let us get the report in sequence on each clause as we come to it and then we will have a better understanding of the whole thing.

The CHAIRMAN: I thought the minister was to go over it section by section.

Mr. APPLEWHAITE: I thought the minister was going to bring up these consultations on the various sections of the bill in order.

The CHAIRMAN: You each have a copy of this report, the report here refers to the various sections of the bill.

Mr. SIMMONS: I think we ought to realize that no group of people in Canada have ever been given such an opportunity to express their views as the Indians have had in the past few years, and, as the chairman said at the last meeting, if it was found necessary to call the Indians in then it would be done and that the Indians would be notified and I think it would be agreeable to all the members of this committee.

Mr. BOUCHER: We agreed on Friday that we would hear the minister and the officials and if necessary after we could call the Indians. So far as I am concerned we did not find anything that would make it necessary to call the Indians.

The CHAIRMAN: That is what we are trying to find out—whether it is necessary to call the Indians.

Mr. NOSEWORTHY: I gave you on Friday a request from a certain group of Indians who requested the privilege of coming before this committee to state their points of view.

Hon. Mr. HARRIS: Those are the Indians from Oka?

Mr. NOSEWORTHY: Yes. I want to know whether those Indians are going to come here and whether I can have an approximate time—next week or the week after, I do not care.

The CHAIRMAN: The Confederacy of Six Nations?

Mr. NOSEWORTHY: Yes. I would like to know whether that request is to be granted and I thought the whole question was to be brought up after hearing the minister.

The CHAIRMAN: We have not finished hearing the minister.

Mr. NOSEWORTHY: Well it is all right with me but I want to know whether these people can be permitted to come before the committee and state their opposition to the Act—they are opposed to the Act.

Hon. Mr. HARRIS: They are opposed to any Indian Act. They say the Indian Act passed by the parliament of Canada has no effective legal operation on their reserve. I have written to those people, and to all who similarly write to me, that they have never yet had a judge agree with them in any one of their lawsuits and until they do they are wasting their time and my time. But, if they are good enough to start with the premise that they are subject to the laws of this parliament that would assist us in trying, as others have, to improve the legislation and I would be glad to receive them.

Mr. NOSEWORTHY: If we had their side of the story—

The CHAIRMAN: We have had it.

Hon. Mr. HARRIS: It is in the record.

Mr. NOSEWORTHY: The story I get from those Indians is that they are exploited every day in the week. Every single one of their treaty rights has been abrogated.

Hon. Mr. HARRIS: Perhaps I have the wrong group.

Mr. NOSEWORTHY: The group is at Oka. Today they tell me they cannot even cut firewood on their reserves; that the white people who have taken their reserves are living comfortably but they have no means of livelihood. I think in fairness to them, we should hear them and I do not agree with that—that they should be left outside.

The CHAIRMAN: I think if there is any group on which there is an injustice being perpetrated we should look into it, but this is not the time and Oka is only a few miles up the river.

Mr. NOSEWORTHY: It is all right with me but I would like to know if they have the privilege of coming and putting their story before the committee.

The CHAIRMAN: I tell you now that we have gone into the Oka matter. You can look into the record. However, maybe we should decide whether we want the Indian Act revised before we get into discussions on whether the Indians want it.

Mr. APPLEWHAITE: We have already decided that.

Mr. JUTRAS: Let us consider the bill.

Mr. CHARLTON: Before you start on the bill I wish you would read the resolution passed on Friday. It is my understanding that we were to consider the report of the minister at this committee meeting.

The CHAIRMAN: The report of the conference and certain data from the minister and departmental officials.

Mr. CHARLTON: You are starting through the bill.

The CHAIRMAN: Look at your report. The whole thing, the report, is a consideration of the bill. How can you separate one from the other?

Mr. CHARLTON: If you are going to start through the whole bill—it is my understanding if you decide to hear the Indian delegations you will start all over again.

Mr. APPLEWHAITE: I was going to suggest the idea I had in the back of my mind is that after hearing the minister on the bill we may go through the bill and find 101 sections that we are entirely satisfied with. When we get to 65 or 66, as examples, the minister may describe what was done at the conference, and we may decide that as it looks 66 perhaps does not satisfy us and the Indians are not satisfied. All right, then stand 66—that is one on which we will call the Indians who are not satisfied. My idea otherwise is if we just call them and let them talk about anything under the sun we will have the 1948 committee again.

After hearing the minister if we find there are 12 or 24 sections with which we are not satisfied and on which the Indians and the department are not in agreement, then we can call whatever witnesses we think necessary and restrict their evidence to the matters we want to hear them on.

Mr. CHARLTON: That is what I want. The resolution says it is this committee report we are supposed to study and not the bill. As I said before, I am willing to abide by the decision the committee made last Friday and hear the minister and his officials on the report. This bill is not the report on the meeting which the minister had. I am willing to abide by that decision but I am not willing to start through this, section by section, without first hearing his report.

The CHAIRMAN: The report refers to the bill. How can you separate one from the other?

Hon. Mr. HARRIS: I am not sure what Mr. Charlton means. The report is an extensive one and I think if we work through the report we will end up with the state of mind Mr. Applewhaite described. Until we go through the report I do not see how you would feel that this or that Indian had not had his opportunity to protest. For example, there are 103 sections of which the Indians approved. That does not mean that this committee will approve of them. As a matter of information I thought you would like to have the comments as you went along. I cannot describe them until we call the sections and go through them. We have a great many recommendations and that is the purpose of reading the section.

Mr. CHARLTON: We would not have to go through the whole bill to hear the minister's report. There are fifteen sections on which there is opposition and that is what we would have to decide on—

The CHAIRMAN: As far as the Indians are concerned they oppose some and agree on others.

Mr. CHARLTON: No, but I say the minister does not have to go into the detail of those sections they are agreed on.

The CHAIRMAN: Perhaps we are not agreed though.

Mr. CHARLTON: If the Indians are agreed on 103 sections they would not want to be heard on them.

Mr. JUTRAS: If we change the sections they might want to make representations.

Mr. CHARLTON: Well I am willing to abide by the decision of the committee—

The CHAIRMAN: You have said that.

Mr. NOSEWORTHY: Has any member of the committee requests for any group to be present?

The CHAIRMAN: I have no doubt that many members have requests but until we get to the sections how will we know?

Mr. NOSEWORTHY: I do not know what sections the Indians are interested in.

Hon. Mr. HARRIS: In your case I would say that it is a complaint against administration and not legislation. There are sections dealing with the cutting of timber and the like, sections which we can come to. We can probably read you their whole complaint if you give us half an hour.

Mr. CHARLTON: May I ask the minister a question?

The CHAIRMAN: I have no objection if the minister has not.

Mr. CHARLTON: How long will it take to go through the report and explain to us just what happened at the meeting?

The CHAIRMAN: What was that?

Mr. CHARLTON: How long will it take to go through the report and explain to us what happened at the committee meeting?

The CHAIRMAN: Here is your conference report, right here.

Mr. CHARLTON: I have it here; I have a copy. The resolution passed on Friday was we would hear the minister and his officials on this report.

The CHAIRMAN: That is what we want to do if you will let us. I cannot see the difference—the report is on the bill and the bill is on the report.

Mr. JUTRAS: Just proceed with the bill and you can stand any section.

The CHAIRMAN: You can stand any section and hear the Indians on it later.

Mr. CHARLTON: I want to ask the minister—it will take it infinitely longer to go through the whole bill than it will this report. Naturally, if the decision to ask Indian delegates to this committee is left for two or three weeks it will be too late. You realize that as well as I do.

The CHAIRMAN: I do not. You have always got another session coming along and you can always bring in an amendment if you want. You heard the minister on the question of future amendments to this bill.

Mr. CHARLTON: At the most it would not take more than one full committee meeting to describe the results of that conference—at the most.

The CHAIRMAN: It would depend upon how many questions you asked. It is like the old question of 'how far is up'?

Mr. WELBOURN: Would we be any further ahead after we had gone through his report?

Mr. CHARLTON: We would know what the Indians did not agree on.

Hon. Mr. HARRIS: I assured the conference that I would tell this committee what they did not agree to. I also told the House, and the conference, that I would read to this committee all representations—and there are a great many by way of correspondence in the six months during which we were preparing this bill. I have those annotated here. I am in the hands of the committee but I thought I would read the representations on each section as we came to it and if there appeared to be a matter of serious moment the committee would decide or debate it or perhaps stand it for further consideration.

Mr. JUTRAS: Those are individual views on the sections and, even if the minister tried, he could not do other than tie them up to the various sections of the bill.

Mr. GIBSON: I move that we consider the bill.

Mr. JUTRAS: I second.

The CHAIRMAN: Let us proceed with section 1, short title.

Shall section 1 carry?

Carried.

Section 2, Definitions:

2. (1) In this Act,

(a) "band" means a body of Indians.

(i) for whose use and benefit in common, lands, the legal title to which is vested in His Majesty, have been set apart before or after the coming into force of this Act,

(ii) for whose use and benefit in common, moneys are held by His Majesty, or

(iii) declared by the Governor in Council to be a band for the purposes of this Act;

(b) "child" includes a legally adopted Indian child;

(c) "council of the band" means

(i) in the case of a band to which section seventy-three applies, the council established pursuant to that section,

(ii) in the case of a band to which section seventy-three does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

(d) "Department" means the Department of Citizenship and Immigration;

(e) "elector" means a person who

(i) is registered on a Band List,

(ii) is of the full age of twenty-one years, and

(iii) is not disqualified from voting at band elections;

(f) "estate" includes real and personal property and any interest in land;

(g) "Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;

(h) "Indian moneys" means all moneys collected, received or held by His Majesty for the use and benefit of Indians or bands;

(i) "intoxicant" includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating;

(j) "member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List;

(k) "mentally incompetent Indian" means an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons;

(l) "Minister" means the Minister of Citizenship and Immigration;

(m) "registered" means registered as an Indian in the Indian Register;

(n) "Registrar" means the officer of the Department who is in charge of the Indian Register;

(o) "reserve" means a tract of land, the legal title to which is vested in His Majesty, that has been set apart by His Majesty for the use and benefit of a band;

- (p) "superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent and any other person declared by the Minister to be a superintendent for the purposes of this Act, and with reference to a band or a reserve, means the superintendent for that band or reserve;
- (q) "surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in His Majesty, that has been released or surrendered by the band for whose use and benefit it was set apart.

(2) The expression "band" with reference to a reserve or surrendered lands means the band for whose use and benefit the reserve or the surrendered lands were set apart.

(3) Unless the context otherwise requires or this Act otherwise provides

- (a) a power conferred upon a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band, and
- (b) a power conferred upon the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.

Hon. Mr. HARRIS: On section 2, Mr. Chairman, there was only one representation with respect to 2(h) and (n) and it was made by Six Nations of the Grand River and the recommendation was that the words "in trust" be inserted after the words "by His Majesty"—the argument being that the Indians feel in all cases dealing with their reserves and with their money it should be specifically stated in the bill that His Majesty is trustee for them with respect to their lands and their money. We took the matter up with the Department of Justice and Justice stated that it was not good drafting to assert that His Majesty was a trustee. I made that explanation to the Indians and particularly to the conference and they accepted it.

The CHAIRMAN: Is it your pleasure that we pass these as we go along? If so we will proceed to pass section 2 subclause (1).

Carried.

Section 2(2), band.

Carried.

Section 2(3).

Carried.

Mr. BLACKMORE: Could we go a little more slowly so as to give us a chance to go from one to another—I know you endeavour to do it that way.

The CHAIRMAN: I want to give the committee every opportunity. Tell me what you want. Is it your desire that these be read out? It would take a rather long time.

Mr. APPLEWHAITE: You could read the marginal note only.

Mr. BLACKMORE: You have passed numbers 1 and 2.

The CHAIRMAN: We have got to section 3, Administration:

3. (1) This Act shall be administered by the Minister of Citizenship and Immigration, who shall be the superintendent general of Indian affairs.

(2) The Minister may authorize the Deputy Minister of Citizenship and Immigration or the chief officer in charge of the branch of the Department relating to Indian affairs to perform and exercise any of the duties, powers and functions that may be or are required to be performed or exercised by the Minister under this Act or any other Act of the Parliament of Canada relating to Indian affairs.

Hon. Mr. HARRIS: There are two recommendations there. One is from the Canadian Catholic Conference which suggests that powers delegated to the chief officer of the branch to perform administrative acts should be modified to provide for appeal to the minister, who should have power to modify a decision of the chief officer.

There was a further recommendation from the North American Indian Brotherhood that the chief officer in charge of the Indian Affairs Branch should be named a commissioner with the rank of deputy minister and two assistant commissioners, one of whom should be a native Indian.

The Canadian Catholic Conference may have been overly cautious. I think they have realized since making the recommendation that in fact the chief officer, that is the director, will at all times be subject to the authority of the minister and no appeal is necessary because if the minister expresses the wish to parliament that a change in policy be effected I am quite sure that it would be.

Mr. BLACKMORE: The minister feels there would be no objection to this clause 3 from the Indians?

The CHAIRMAN: Shall clause 3 carry?

Carried.

Clause 4(1), Eskimos:

4. (1) This Act does not apply to the race of aborigines commonly referred to as Eskimos.

(2) The Governor in Council may by proclamation declare that this Act or any portion thereof shall not apply to

(a) any Indians or any group or band of Indians, or

(b) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration.

Mr. GIBSON: The matter of Eskimos has been decided?

Hon. Mr. HARRIS: Eskimos are under the Minister of Resources and Development and it had to be stated in this fashion because there is a Supreme Court decision which says that Eskimos are Indians. We inserted this to show that the Act did not cover them. There was a dispute between the province of Quebec and the Dominion government with respect to the Eskimos around Hudson Bay. It was decided by the Supreme Court of Canada that they were in fact Indian tribes.

Mr. GIBSON: We say they are not covered in so far as this Act is concerned?

Hon. Mr. HARRIS: Yes, and by order in council which was tabled in late June of last year authority and control over Eskimos has been vested in the Minister of Resources and Development. Ninety per cent of them are in the Northwest Territories and the Yukon.

Mr. SIMMONS: Their mode of living was different and so that is why this clause was inserted.

Mr. BLACKMORE: The clause you have in mind there is subsection (2).

The CHAIRMAN: We are dealing with clause 4(1). Shall it carry?

Carried.

Clause 4(2), Governor in Council may declare Act inapplicable.

Hon. Mr. HARRIS: There are two objections to that, one from Six Nations of the Grand River and one from the Sarcee Indian band, Alberta.

The Sarcees reject the subsection entirely and the Six Nations of the Grand River say this: "The understanding of this section by the Six Nations Indians is that the Governor in Council has the right to exercise unlimited power without the Indians being consulted, making it possible to abolish their reserve lands

and privileges made by treaty. They consider this section is a gross injustice, contrary to all British democratic principles, and they know of no right whereby the Government, as one party to a bargain previously made with their forbears, can take away the remaining rights of the other party without their expressed consent. The Six Nations, therefore, feels that the elimination of this Section is essential if the Indian people are entitled to any reasonable justice."

Now the burden of the argument is this and it is contained in another presentation which I have just received this morning from Mr. Welbourn from the Students Christian Movement of the University of Alberta which we might read into the record as follows:

As it stands now clause 4(2) of the bill is a two-edged sword. While it gives the Governor General in Council the right to declare parts of the Act inapplicable to an Indian or band, thus opening the way for the Indians to gain progressively greater control over their own affairs, it could also open the way to their losing some of the rights they already have. An amendment should be written into this clause so that the present rights and status of the Indians shall be in no way interfered with.

The delegation from the Six Nations Council called on me and expressed their disapproval of the section on the ground that it could be used to take away from them the provisions of the Indian Act itself.

I said that was precisely what the section was intended to do. If they were to agree with me there were advantages in the Indian bill for them we could perhaps proceed on another basis.

Mr. SIMMONS: Does that mean the Governor in Council can expropriate lands—

Hon. Mr. HARRIS: No, no, it has nothing to do with that. I will come to that. The purpose of the section is to relieve the Indian and the band council of any onerous provisions of the Act. In other words this is the section we would use, e.g., to remove the liquor provisions from operations in the case of a given reserve. This is the section we would use to eliminate the authority in any given case of the minister or the Governor in Council or an Indian agent on a reserve.

In time we are going to increase the stature of the band council and the Indian, and increase his control over his affairs. This is not going to take anything away from him. In any event, we can only take away the sections of the Act.

You will notice that subsection 2 says "The Governor in Council may by proclamation declare that this Act or any portion thereof shall not apply to... Indians."

Now the purpose of that I have already stated to the Six Nations council, (although I know Mr. Charlton will argue here) is to answer the other question confronting us: "Well, if you do not have 4(2) how are you going to continually expand and make progress in the band?" They agreed that was so but they stated their fear was that we would use it in a retrogressive manner rather than a progressive manner. All I can say is that we have tried to draft this in a way that would cover the power the Governor in Council would have. I think we will have to leave it to the Governor in Council that the power will be exercised in the light of parliament trying to get on with the job.

Mr. GIBSON: Maybe you could give an undertaking to parliament that would satisfy them?

Hon. Mr. HARRIS: I have done that on second reading.

Mr. GIBSON: Under this section?

Hon. Mr. HARRIS: Yes.

Mr. BLACKMORE: The particular anxiety the Indians express is that they have no doubt that Mr. Harris, as long as he is in power, will administer it properly, but supposing this government goes out—

The CHAIRMAN: Perish the thought.

Mr. BLACKMORE: Well, reasonable people must look ahead thirty or forty years. Then they wonder about what might occur and they feel that there should be some stipulation in the law or in the section declaring that it is not the intention to take any rights of the Indians away from them.

Hon. Mr. HARRIS: May I just add what I forgot. This section has been in the Act since 1874. There has never been any complaint against it before that I know of from any band council, but since bill 267 was prepared they have suddenly become fearful of the results—although they had been living under the same conditions all these years and none of them had ever felt any adverse effect by the Governor in Council having these powers under 4(2).

Mr. CHARLTON: It is the result of an action taken in 1924 that made the Six Nations so very fearful. What section of the old Act does this duplicate?

The CHAIRMAN: Section 3 I think. You have the old bill before you.

Hon. Mr. HARRIS: Section 3 reads: "The Governor in Council may by proclamation, from time to time, exempt from the operation of this Part or from the operation of any one or more of the sections of this Part, Indians or non-treaty Indians, or any of them, or any band or irregular band of them, or the reserves or special reserves, or Indian lands, or any portion of them, in any province or in the territories, or in any of them; and may again, by proclamation, from time to time, remove such exemption".

Mr. CHARLTON: Will the minister give his assurance that this will not be used to do away with any of the reserves across the dominion?

Mr. GIBSON: Oh, no.

Hon. Mr. HARRIS: What do you mean by that?

Mr. CHARLTON: Just exactly what I said. Will this part of the Act not be used, and will the minister give assurance that it will not be used at some future time for the government to do away with the Indian Act as far as certain reserves in the dominion have it?

Hon. Mr. HARRIS: No, the very purpose of it is to do away with the Indian Act on the reserves so that the Indians can have full self government.

Mr. CHARLTON: To relieve the Indians of any obligations under this Act?

Mr. APPLEWHAITE: This would be the section you would use if you decided to enfranchise a whole village as a unit?

Hon. Mr. HARRIS: No, enfranchisement comes at the end.

Mr. APPLEWHAITE: Would you not use this section to convert any Indian village into a municipality?

Hon. Mr. HARRIS: It might be necessary to use this in connection with a particular band that wished to be voluntarily enfranchised, used to effect some of the legal matters that could not be effected otherwise.

Mr. APPLEWHAITE: Even though the section has been there for years the power to revoke the section would remain?

Hon. Mr. HARRIS: The Department of Justice says that where you by order in council confer a power to be used to exempt, you should also confer by statute the power to alter the exemption—because if you do not do that you cannot take it back afterwards. There might be an occasion where we would grant some powers to a band under this section and after experience find that they should not have those powers. We would have to have this provision there or else we could not revoke the powers given.

Mr. APPLEWHAITE: I would not be worried unduly but if the power is there to revoke such a decision and revert to the previous status there may be an awful lot of complications, acquiring rights and so on in between.

Hon. Mr. HARRIS: I do not think any revocation of authority would alter rights that had been acquired in the interval. However, that is a matter we would have to leave to the legal advisers. You will find a similar provision later on in section 32 with regard to permits where we provide that the Governor in Council may exempt anyone from the operation of that section, but may by order in council revoke that exemption. If some band is given the right to manage their own affairs by selling their own livestock and grain and in a few years impoverish themselves we would have to revoke that right and we could not do it unless we had the power to do that similar to this one.

Mr. BLACKMORE: Would the minister mind if one of his officials prepared a statement setting forth the number of cases in which that clause has been used in the past?

Hon. Mr. HARRIS: It has never been used.

Mr. BLACKMORE: A comparable clause in the other Act?

Hon. Mr. HARRIS: Is never has been used.

Mr. BLACKMORE: This clause is causing much anxiety. It looks to me that if something were put in there to protect the interests of the Indians by law it would relieve a lot of concern.

Mr. CHARLTON: I would like to move an amendment to that section as follows: After the word "may" delete "by proclamation" and insert "by consent of the band".

The CHAIRMAN:

Section 4, subsection 2, line 1, the Governor in Council may by consent of the band declare any act shall not apply to the—

Mr. BLACKMORE: It is 1.00 o'clock.

The CHAIRMAN: We will take notice of the amendment. It is now 1.00 o'clock.

We will meet tomorrow if it is your pleasure, at 11.00 o'clock, and the following meeting will be on Wednesday afternoon at 4.00 o'clock.

Agreed.

The meeting adjourned.

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"Indians, Special Committee on, 1951"

SESSION, 1951
HOUSE OF COMMONS

SPECIAL COMMITTEE

APPOINTED TO CONSIDER

BILL No. 79

AN ACT RESPECTING INDIANS

CHAIRMAN—MR. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, APRIL 17, 1951

WITNESSES:

Hon. W. E. Harris, Minister of Citizenship and Immigration.
Hon. D. M. MacKay, Director, Indian Affairs Branch.
Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch.
Mr. W. Cory, Legal Adviser, Dept. of Citizenship and Immigration.

MINUTES OF PROCEEDINGS

TUESDAY, April 17, 1951.

The Special Committee appointed to consider Bill No. 79, An Act respecting Indians, met at 11.00 a.m. this day. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs Applewhaite, Ashbourne, Black (*Chateauguay-Huntingdon-Laprairie*), Blackmore, Blue, Boucher, Brown (*Essex West*), Bryce, Cauchon, Charlton, Gibson, Harkness, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Noseworthy, Richard (*Gloucester*), Simmons, Valois, Welbourn, Whiteside, Wood.

In attendance: Messrs. Hon. W. E. Harris, Minister of Citizenship and Immigration; Mr. D. M. MacKay, Director and Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch; Mr. W. Cory, Legal Advisor, Department of Citizenship and Immigration.

The Committee resumed consideration of Bill No. 79, An Act respecting Indians;

On sub-clause (2) of Clause 4, the Committee considered the amendment of Mr. Charlton: "That the words 'by proclamation' after the word 'may' in line 18 be struck out and the following substituted therefor: 'by consent of the band'".

After discussion, the sub-clause and the proposed amendment were allowed to stand.

Clauses 5 to 8 inclusive were adopted.

Clause 9: sub-clause (1), (2) and (3) were adopted and sub-clause (4) allowed to stand.

Clause 10, adopted.

Clause 11: paragraphs (a), (b), (c) and (f) were adopted, and paragraphs (d) and (e) were allowed to stand.

Clause 12, sub-clause (1) stood.

On sub-clause (2) of Clause 12, the Committee agreed that the word "Indian" in the 18th line be struck out and the word "person" substituted therefore. Sub-clause (2), as amended, carried.

Clauses 13 to 19 inclusive, were adopted.

At 1.00 p.m. the Committee adjourned to meet again on Wednesday, April 18, at 4.00 p.m.

E. W. INNES,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

APRIL 17, 1951.

The Special Committee appointed to consider the Indian Act met this day at 11.00 a.m. The Chairman, Mr. D. F. Brown, presided.

The CHAIRMAN: Order, gentlemen. If it is your pleasure we will proceed this morning with the hearing of the minister's presentation. I believe that we have disposed of sections 1, 2, 3, and 4 (1) and we are on section 4 (2). There was an amendment was there not? That being a contentious matter shall we proceed with the other sections and come back to that later on?

Mr. CHARLTON: You do not want to proceed with the amendment now?

The CHAIRMAN: I thought we decided that we would deal with contentious matters at a later date.

Mr. CHARLTON: No. 4 (2) stands then?

The CHAIRMAN: Yes. Is that agreeable?

Agreed.

Section 5?

Hon. Mr. HARRIS: If you will refer to the appendix to the conference report I think you will find that there is no objection to any clauses down to No. 11, so that as I go through them and read the objections they will be objections made by correspondents or from other groups, but not the conference. I should add as a matter of fact that there was no objection to clause 4 (2) at the conference either. They were withdrawn in the light of explanations given. Generally speaking, with respect to the clause dealing with definitions and registration of Indians, as I said, we will come to specific objections when we come to clause 11, but with respect to these sections dealing with the definitions of an Indian and the methods whereby the definitions are to be applied there are some general observations which have been made and I shall read those:

"Indians of Fort Vermilion Indian agency, Alberta:

These Indians expressed the opinion that an illegitimate child of a probably white father, born to a woman said to be of non-Indian status, but who has been living the Indian mode of life and brought up as a Treaty Indian, should be registered in the band unless definite proof can be obtained to the contrary, either by the father acknowledging parenthood, or through court action.

Okanagan Society for the Revival of Indian Arts and Crafts, Oliver, B.C.:

Any person who up to date has been living on a reserve and has been accepted by the Indians of that reserve should not now be denied Indian status. Any query as to status should be left to the Indians who should be able to decide who is or who is not a member of their bands.

Fort Alexander Catholic Association, Pine Falls, Manitoba:

Request that Indians who are in treaty remain in register regardless to proportion of blood.

Indians of The Pas, Chemawawin, Matthias Colomb, Moose Lake, Red Earth, Shoal Lake and Split Lake Bands, Manitoba:

Changes in these sections unanimously agreed to.

Hurons of Lorette, Quebec:

Suggest definition of Indian be such that all male Indians remain as such unless they desire to change status—do not want any change in status through marriage.

President, North American Indian Brotherhood:

Suggest deletion of sections 8-12 inclusive of the bill—suggest that Indian bands should determine band membership.

Chief Andrew J. Bear, John Smith's Reserve, Duck Lake Agency, Saskatchewan:

Chief Bear disagrees with sections 5-17. Remaining sections are agree with stating 'it has many features in favour of the Indians which are not in the present Act.' Chief defines an Indian as follows: A child of Indian treaty parents, a male person of Indian blood, who belongs to a regular band, and any child of such person.

Committee of Friends of the Indians, Edmonton, Alberta:

Committee of Friends of the Indians find that sections 5-17 of the bill wholly inadequate for just settlement and urge:

- (a) that band membership should be the responsibility first of the chiefs and councillors and members of the band concerned. The Indians are the possessors of the land, moneys and reserve privileges, which the department is desirous of safeguarding. The treaties were entered into by the Indians and government representatives on equal footing. They were then considered capable of making decisions, and in the opinion of the committee, the Indians themselves are well qualified to make decisions as to who shall or shall not be a member of their band and that the Indians should be encouraged to take the responsibility of making these decisions;
- (b) That the Indians shall be assured that there shall be no tampering with the band lists. That nothing shall be written into a new Act that shall in any way curtail the rights of Indian bands to decide, by majority vote of the electors of a band, on the membership of the band concerned, such vote to be accepted by the minister. Should no agreement be arrived at between the minister and the band, the matter should be taken to the Supreme Court."

The CHAIRMAN: Shall we dispose of clauses 5 and 6?

5. An Indian Register shall be maintained in the Department, which shall consist of Band Lists and General Lists and in which shall be recorded the name of every person who is entitled to be registered as an Indian.

6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the Band List for that band, and the name of every person who is not a member of a band and is entitled to be registered shall be entered in a General List.

Hon. Mr. HARRIS: May I add this in explanations of clauses 5 and 6, that the chief objection which was made and which is not reflected here because the objection has been made to bill 267, was that the minister should have the final say as to who would not go on a band list. Between bills 267 and 79 we altered that to appoint a registrar in the department who would make the decision and from that decision there would be an appeal, as I said yesterday, to the appropriate county judge. The only difference between that and the many representations we received was that they suggested that it should be

the Supreme Court judge in most of the representations and we have made it the county court judge because in most cases he will be closer to the reserve concerned and will be less likely to be busy and will be able to make these decisions within a reasonably short time after the appeal is made. There is one further objection made by the Indian Association of Alberta. It was stated that this section would lead to a great many petty complaints by one Indian against the other and that there would be efforts made by Indians to remove other Indians from the present band list and that therefore in order to avoid that unpleasantness we should freeze the lists which are now in operation and say that everyone who is on the list, on the 1st of April, 1950, should automatically remain on not subject to appeal as provided for in the section. My answer to that was that we knew there were people on the list who should not be on and while we were not going to engage in any kind of witch hunt we should not close the door so that anybody who is not properly on the list today should be able to remain on simply because we are amending the Act to provide for a new list.

The CHAIRMAN: Any objections?

Carried.

Clause 6?

Mr. HARKNESS: In connection with clause 6—

The CHAIRMAN: Would you like to hear the minister first?

Mr. HARKNESS: I thought the minister had finished with all of 6.

Hon. Mr. HARRIS: Yes. But I will answer questions now.

Mr. HARKNESS: Who would be the person or persons to whom the last two lines would apply:

not a member of a band and is entitled to be registered shall be entered in a General List.

What Indians particularly would that apply to?

Hon. Mr. HARRIS: That will apply to persons who are known as Indians and who have not been organized into bands but who nevertheless are recognized by the department and we place them on a general list for the time being. They may or may not be ultimately formed into bands.

Mr. HARKNESS: In the case of Alberta what Indians out there would that apply to, if any?

Mr. D. M. MacKAY (Director of Indian Affairs): Some sections in the northern part of the province, Colonel Harkness, and also groups in the Northwest Territories who have not been organized into bands. We have some in Quebec and some in British Columbia. The Cheslatta band, for instance, some years ago withdrew from the band and for many years just roved around on their own and had not been constituted into a band and were not until a few years ago. Those are the Indians whom this general list is expected to cover.

Mr. NOSEWORTHY: Are those Indians living on reserves?

Mr. MacKAY: Some are and some are not.

Mr. NOSEWORTHY: But are they registered?

Mr. MacKAY: Oh, yes, they are registered bands, some of them.

Mr. HARKNESS: This is essentially meant to apply to people in the more remote territories you would say?

Mr. MacKAY: Yes, I think that is so. Three would probably be the odd Indian here and there throughout the country who drifted away from a former band and dissociated himself from them and took up residence not in a reserve necessarily but in close proximity to a reserve and would live among the Indians

on a reserve and yet would not belong to any band—he would be registered under the general list.

Mr. BRYCE: Would illegitimate children born on a reserve become automatically members of the band?

The CHAIRMAN: What is that question?

Mr. BRYCE: Would illegitimate children born on the reserve automatically become members of the band?

Hon. Mr. HARRIS: We can leave that until we come to clause 11.

The CHAIRMAN: Clause 6?

Carried.

Clause 7 (1):

7. (1) The Registrar may at any time add to or delete from a Band List or a General List the name of any person who, in accordance with the provisions of this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

(2) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom.

Mr. HARKNESS: In connection with clause 7 (1) is there anything which restrains the registrar from deleting anybody from the band or is that entirely within his judgment?

Hon. Mr. HARRIS: His judgment would be exercised for instance on a complaint or information that came to our hands and action of that kind should be taken. We will, of course, lay down a minimum standard of evidence which he will have to observe and then, as I say, from his decision there is an appeal to the county court judge.

Mr. HARKNESS: That is what I was getting at, as to what regulations you had drawn up, if any that the registrar would be required to follow either in adding or deleting a name.

Hon. Mr. HARRIS: He is obliged to follow the definition of Indian which is contained in clause 11, but at the moment when we deal with cases of this kind we require all the information we can get as to the facts—affidavits and the like, certificates and expressions of opinion from the band council—all these go into the decision as to whether a particular person is entitled to band membership or not.

Mr. APPLEWHAITE: Is there any provision for informing the person concerned before a decision is taken with regard to his status.

Hon. Mr. HARRIS: If there is no complaint made with respect to any person who is on the list he stays there but should there be a complaint against a particular Indian he is the most vital person concerned and he is the one who is notified, and precautions will be taken to see that this is done.

Mr. APPLEWHAITE: Is that provided for by statute, regulations, or just by departmental practice?

Hon. Mr. HARRIS: If you will look at clause 9 it says under subclause (2):

Where a protest is made to the registrar under this section he shall cause an investigation to be made into the matter and shall render a decision,—

We will provide by regulation that a notice be given personally to the person concerned.

Mr. APPLEWHAITE: Would the minister definitely undertake that the regulations will state clearly that the person concerned shall be personally notified before any decision is taken as to his status.

Hon. Mr. HARRIS: I will, subject only to the possibility that he cannot be found.

The CHAIRMAN: Clause 7 (1)?

Mr. BLACKMORE: Mr. Chairman, before you carry clause 7, we might as well put at the end of that "in his judgment" for his judgment in the final analysis is the standard, that is, subject to all the restrictions the minister mentioned.

The CHAIRMAN: Subject to appeal—so it is not in his judgment.

Hon. Mr. HARRIS: No, the registrar acts in accordance with the provision of this Act as stated in the third line.

The CHAIRMAN: Are we through with subclause (1)?

Carried.

Subclause (2)?

Carried.

Clause 8?

Carried.

The CHAIRMAN: Clause 9, subclause (1)?

Carried.

Clause 9, subclause (2)

9. (2) Where a protest is made to the Registrar under this section he shall cause an investigation to be made into the matter and shall render a decision, and subject to a reference under subsection three, the decision of the Registrar is final and conclusive.

Mr. HARKNESS: On the last line of subclause (2)—"the decision of the registrar is final and conclusive."

Clause (3) applies where the registrar's decision may be taken before the county court judge. Is that precaution sufficient to protect the Indian himself?

Hon. Mr. HARRIS: Yes, with the preceding words subject to a reference under subclause (3) the decision of the registrar is final. You protect his appeal first and then say that the decision is final unless the appeal is taken.

Mr. BLACKMORE: In the case of (2) does it say by whom an investigation shall be made.

Hon. Mr. HARRIS: He—that is the registrar.

Mr. BLACKMORE: By whom?

Hon. Mr. HARRIS: By the registrar.

Mr. BLACKMORE: But it says here that the registrar shall cause an investigation to be made. What is the machinery for doing that? Who will he call on to do that? According to that wording he does not make it himself, he causes it to be made.

Hon. Mr. HARRIS: It will be the same kind we have today, under the same conditions. We have to decide from time to time now whether an Indian is entitled to membership in a particular band and the registrar will continue the present practice. We will improve it if it needs improvement, but that investigation will be conducted in the same manner as similar investigations are now conducted.

Mr. BLACKMORE: Would it take too long to tell us how that is done now by the officials?

Mr. MacKAY: If the complaint comes here to Ottawa why then of course we have to refer it to the regional supervisor who takes action to have the local superintendent give the information that is necessary, and I should think in

this particular case we would proceed along those lines and if further safeguards are required, as the minister suggested, they would be provided.

Mr. BLACKMORE: In the last analysis it will be referred to the Indian agents?

Mr. MACKAY: Yes.

Mr. BLACKMORE: What safeguards are established to make sure that he will do just exactly the right thing?

Mr. MACKAY: Of course, he will have to get the evidence from the Indian in support of his claim for membership in the band, for instance, such as a birth certificate or evidence that he has lived for so many years on the reserve, that he is of Indian blood. There would be a good many things to be enquired into by the local superintendent.

Mr. BLACKMORE: After the agent obtained the evidence he deemed necessary he would be the one who would make the final decision.

Mr. MACKAY: He would send the information to Ottawa and the registrar here would make the decision on the basis of the information received from the field by the supervisor, and of course, there is a provision following for an appeal against the decision of the registrar.

Mr. BLACKMORE: I do not desire to cast any reflections on any of our agents but there are agents in whose hands I should hate to see a case rest completely.

Mr. MACKAY: The responsibility for securing the information does not rest entirely on the shoulders of the agents. I should say the senior officer in the province should have to accept the responsibility.

The CHAIRMAN: It is understood from what the minister has said that in the regulations there would be provision for giving personal notice to the person in question. Is that satisfactory?

Mr. BLACKMORE: In a general way it is all right, if there are not some loopholes.

Mr. MACKAY: May I continue for a moment? In difficult cases we send an investigator from Ottawa direct to the field, if we are not satisfied with the information supplied. That has been done, of course, and it could continue to be done.

Mr. BLACKMORE: It is understood that the agent conducting this investigation would work in conjunction with the chief of the band, I presume?

Mr. MACKAY: Oh, yes, he would have to.

Mr. BRYCE: But the senior officer of the province always depends on his agent, is that not right?

Mr. MACKAY: That is right.

Mr. BRYCE: And they are not all reliable.

Mr. MACKAY: They are not all reliable.

Mr. BRYCE: That is what I mean, they are all not reliable, some are not reliable.

Mr. MACKAY: I think the man in charge of the province should know his agent pretty well and he will know how to assess the information secured from the agent.

Mr. BRYCE: I doubt if that is the case sometimes.

Mr. MACKAY: Well, I am not sure but I can say that in my experience of a good many years there are very few agents that cannot be trusted to supply the necessary information. There is the odd one who is inclined to be somewhat careless but I should think that by far and large they are not unlike any other group of employees—they are a cross section of the people, and some are better than others.

Mr. GIBSON: It is pretty rough to say that some are entirely not reliable. If that is so we should get rid of them.

Mr. BRYCE: I hope the department is doing that because there are a lot of them that way.

Mr. MacKAY: I would not like to agree to that.

Mr. BRYCE: I am talking from experience.

Hon. Mr. HARRIS: Let us say that from time to time we find an unreliable agent and we take steps to straighten the affairs out.

Mr. HARKNESS: In the case of an Indian being added to the band, if the band does not want him have they any right to keep him from being added to their band? If so, where is that provided for?

Hon. Mr. HARRIS: It is not provided for by statute. It is a regulation, it is a part of the practice. I do not think that any decision is ever made without obtaining the sense of the band council. That is not to say we may in every case observe their wishes but they are a party to these proceedings quite as much as the individual Indian.

Mr. APPLEWHAITE: But you are not suggesting that man entitled to membership in a band can be refused because he is unpopular in the band council?

Hon. Mr. HARRIS: No, but that is a difficult decision we often have to make.

The CHAIRMAN: Clause 9, subclause (2)?

Carried.

Clause 9, subclause (3):

(3) Within three months from the date of a decision of the Registrar under this section

(a) the council of the band affected by the Registrar's decision, or

(b) the person by or in respect of whom the protest was made, may, by notice in writing, request the Registrar to refer the decision to a judge for review, and thereupon the Registrar shall refer the decision, together with all material considered by the Registrar in making his decision, to the judge of the county or district court of the county or district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other county or district as the Minister may designate.

Mr. VALOIS: In connection with clause 9, subclause (3), to what court would these appeals be referred in the province of Quebec?

Hon. Mr. HARRIS: It would have to be the superior court unless we can make arrangements for some of the magistrates to do it. We will work that out too.

Mr. VALOIS: There is no need to specify that in this section, I suppose?

Hon. Mr. HARRIS: No, we can provide for that by regulation too. It is the purpose to have the matter dealt with by the court closest to the reserve.

Mr. HARKNESS: I take it that there is no cost on the Indian who wants to have his case referred to the county court judge.

Hon. Mr. HARRIS: I beg your pardon?

Mr. HARKNESS: I take it from that that there is no cost to an Indian who wants to have his case brought up before a county court judge—is that correct?

Hon. Mr. HARRIS: No, I do not think that is correct. We do not propose to pay his expenses in this connection unless you put it in the statute.

The CHAIRMAN: It is true, I think, that any citizen of the country may go to the highest court in the land and act as his own solicitor. If he engages counsel, of course, counsel expects to be paid.

Mr. HARKNESS: I am not talking of engaging counsel, but as far as court costs are concerned—

Hon. Mr. HARRIS: There will be some filing fees before the county court judge which will be nominal, there will be witness fees, and it will rest with the county court judge whether he assesses the cost against the department or the complainant or the Indian concerned.

Mr. BLACKMORE: I do not know whether this is worth considering but could we not have appointed throughout the country advocates of the Indians. Now, the ordinary Indian just has no money at all to present his case and he has no ability to present the case himself.

The CHAIRMAN: You are not talking about the Blood Indians now?

Mr. BLACKMORE: Oh, yes, and that is saying plenty about the others. A great many of them have not the experience, the prestige, the confidence to present his case before a court. I would say that the ordinary white man is at a serious disadvantage when he attempts to defend himself in court, so what chance has the Indian?

Hon. Mr. HARKNESS: We might have a discussion on that when we come to clause 64 which deals with expenditures.

Mr. RICHARD: Just in what way will a county court judge be able to fix costs on anybody?

Hon. Mr. HARRIS: In the first instance the person who takes the appeal from the registrar is the plaintiff.

Mr. RICHARD: And exactly what scale of fees would the county court judge have to follow?

Hon. Mr. HARRIS: The ordinary county court schedule.

Mr. RICHARD: There is no provision for that.

Mr. BLACKMORE: The Indian is certainly not as well qualified to present his case as the ordinary white person would be.

The CHAIRMAN: I do not think we should assume he is not our equal.

Mr. BLACKMORE: If we do not make that assumption we should be overlooking the fact that Indians are suffering from generations of neglect in education and other matters that put them at a serious disadvantage today.

Hon. Mr. HARRIS: May I answer Mr. Richard? I think you will find that the costs are provided for in the Enquiries Act.

Mr. RICHARD: The thing is that the jurisdiction of the county court judge is statutory. There might not be any way of taxing the costs.

Mr. HARKNESS: The point I have in mind is that in northern Alberta in order to have their appeal heard the Indians in most cases would have to come a very considerable distance, and the practical difficulties in the way of doing that, I would think, would make the law practically inoperative. I am looking at it not from the theoretical point of view but from the practical point of view as to whether those Indians would be able to take any advantage of that clause.

Hon. Mr. HARRIS: We will pass the question. I understand that we will consider the question of costs and come back to it later.

The CHAIRMAN: Clause 9, subclause (3) stands.

Now, clause 9, (4).

Mr. BLACKMORE: Do I understand that clause 9 (3) is standing?

Hon. Mr. HARRIS: It will be better if you pass clause 9 (3) and allow 9 (4) to stand.

The CHAIRMAN: We are now on clause 10.

10. Where the name of a male person is included in, omitted from, added to or deleted from a Band List or a General List, the names of his wife and

his minor children shall also be included, omitted, added or deleted, as the case may be.

Hon. Mr. HARRIS: There are two objections to clause 10. The Sarcee Indian band of Alberta rejected this clause entirely on the theory I gave you before that there should be no change in the band list. Secondly, from the Queen Victoria Treaty Protective Association came the suggestion that the wife and minor children of a person whose name is deleted should be considered in their own right.

In other words loss of band membership by an Indian should not thereby lead to loss of membership by the wife and children. Now, our answer to that is should the wife herself have any claims on membership her claim would, of course, be given consideration but if the father is not an Indian undoubtedly the children are not Indians and therefore we are obliged to remove them with the person who goes out.

Mr. APPLEWHAITE: Are you really considering the qualifications of the wife? This section says that her name shall be included, omitted, added to, or deleted—

Hon. Mr. HARRIS: The only difficulty I foresee is this, that at the time of the marriage the woman is herself an Indian and she marries what she considers to be an Indian who at a later time turns out not to be an Indian. I do not suggest we would necessarily retain her membership but I think that is a consideration that should be taken into account at that time.

Mr. BLACKMORE: Is Clause 9, subclause (4) standing?

The CHAIRMAN: We are on clause 10.

Mr. NOSEWORTHY: On clause 10, would there not be cases where the wife would be deserted or separated from the husband who is not an Indian and who would herself be entitled to membership? Just what would her status be?

Hon. Mr. HARRIS: Her status would come under clause 11, the definition of Indian.

Mr. NOSEWORTHY: She would not be affected by the removal of her husband from the band list?

Hon. Mr. HARRIS: Not necessarily.

Mr. HARKNESS: In the case of a woman brought up in an Indian band who marries a man who is also considered a member of that band but subsequently he is put out of Indian status because his grandfather, let us say, took script money or something or other, it seems to me that her position is a wrong one. She marries a man in good faith thinking he was an Indian and then suddenly he and she and the children are put out of the reserve, and as you know in a very large number of cases when they are put off the reserve they have an extraordinarily difficult time. They are not equipped to make their way in general society outside of their reserve and about the only thing they can do often is that the woman under those circumstances will go with her children to live on the reserve, living with her people. That is what she does do and it constitutes a burden on them. It would seem to me that in cases of that kind the woman and the children should be protected as far as their Indian status is concerned.

Hon. Mr. HARRIS: The practical problem is one of her having a home and maintenance and the practice is that when she goes back to the reserve—I do not say in every case—she is allowed to stay there; but in most cases she does, in fact, find a home on the reserve but that of itself need not carry with it band membership. It is a matter of compassionate interest in the woman and her children but to say that she should then be able to resume her band membership after marrying a person she thought was an Indian, we do not agree with that.

Mr. HARKNESS: I am not talking about that case but the case of a woman marrying a man who as far as she knows is an Indian and he subsequently is found not to be an Indian.

Hon. Mr. HARRIS: That is a matter for consideration in each case. As a matter of fact her actual status of living on a reserve is never interfered with unless there is good reason for it.

Mr. HARKNESS: Now, what I would like to point out is that a situation might arise where there just will not be any marriage, the children will be illegitimate, and then the women and children are protected at least. Some of these other provisions are the same way, which I think is a good way. The general situation with this section and some of the subsequent sections is that an Indian woman is much safer if she wants to retain her Indian status and make sure of having a home for herself as well as her children, she is much safer not to get married and it is far better to live with the man.

Hon. Mr. HARRIS: I think it is fair to say that your particular argument, proper, of course, as it is, applies only to a limited number of Indians in the province of Alberta. We do not run into such a problem elsewhere than in the northern part of your province.

Mr. HARKNESS: I should think you would in Saskatchewan and also in Alberta you would run into it.

Hon. Mr. HARRIS: We have not yet.

Mr. HARKNESS: I should think it might be fairly general throughout the whole country. Before we leave that point it seems to me we should not have provisions in an Act which present the Indians, we will say, with making a choice that they are far better off to live with a man rather than to marry him.

Hon. Mr. HARRIS: I do not think that is the actual result.

Mr. HARKNESS: I do not know but I think it is.

The CHAIRMAN: She does not marry him just because he is an Indian.

Mr. HARKNESS: Well, it is a matter of protecting their rights as Indians and particularly making sure of having a home for herself and her children.

The CHAIRMAN: He will still be able to protect her.

Mr. HARKNESS: How?

The CHAIRMAN: By working for her.

Mr. APPLEWHAITE: Assuming a case under this clause 10 where an Indian woman, a bona fide Indian woman has been struck off the list because her husband was struck off, could she at a later date apply to be included in the list again?

Hon. Mr. HARRIS: No, she could not. As I say in most cases these people would make their way without Indian status. There have been a lot of them do that.

Mr. APPLEWHAITE: Could she under the Act have the right to apply?

Hon. Mr. HARRIS: No, she would not.

The CHAIRMAN: Clause 10?

Carried.

Clause 11:

11. Subject to section twelve, a person is entitled to be registered if that person

(a) on the twenty-sixth day of May, eighteen hundred and seventy-four, was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordinance Lands*, chapter forty-two of the statutes

of 1868, as amended by section six of chapter six of the statutes of 1869, and section eight of chapter twenty-one of the statutes of 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada,

- (b) is a member of a band
 - (i) for whose use and benefit, in common, lands have been set apart or since the twenty-sixth day of May, eighteen hundred and seventy-four have been agreed by treaty to be set apart, or
 - (ii) That has been declared by the Governor in Council to be a band for the purposes of this Act,
- (c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b),
- (d) is the legitimate child of
 - (i) a male person described in paragraph (a) or (b), or
 - (ii) a person described in paragraph (c),
- (e) is the illegitimate child of a female person described in paragraph (a), (b) or (d), unless the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered, or
- (f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

Hon. Mr. HARRIS: On clause 11 we had a protest from Bishop Ragg of Calgary, Alberta. He said that the Indians themselves should decide membership of the band. From the Public Affairs Institute of Vancouver, British Columbia, we received a suggestion that this definition is too vague, that it should be more rigid—this is rather an unusual condition in a statute—and more humanitarian. Those are the only objections except those registered at the conference which will be found on page 3 of the proceedings at the bottom.

Paragraph No. 16 reads:

It was suggested, with respect to section 11, that the present band lists be accepted as final as to those on those lists, and not subject to revision as provided in the Bill (section 9) and that the deletion and addition of names should apply only with respect to those who may hereinafter be added to the band lists.

It was also stated by one representative, with reference to subsection (e) of this section, that it was unfortunate that a illegitimate child of an Indian woman should be entitled to band membership.

That brings up the question some members mentioned a moment ago. There was quite general recognition by all the other members at the conference that illegitimate children of an Indian woman were entitled to band membership along with the mother and while he did not withdraw his objection he was in a minority of one in that respect.

The CHAIRMAN: Subclause (a)?

Carried.

Subclause (b)?

Carried.

Subclause (c)?

Mr. HARKNESS: On subclause (c) what about a female person? Subclause (c) reads a person is entitled to be registered if that person is a male person who is a direct descendant in the male line of a male person described in paragraphs (a) or (b).

Hon. Mr. HARRIS: She is subject, of course, to having married off and so on.

Mr. HARKNESS: Yes, but if she has not married off?

Hon. Mr. HARRIS: She comes under subclause (b) as a member of a band if she is a member.

Mr. HARKNESS: Why is the distinction made between male and female?

Hon. Mr. HARRIS: Would you read subclause (d)? That is covered by subclause (d). We are trying to proceed chronologically. Subclause (c) covers the male descendants of the persons in (a) and (b), and (d) covers legitimate children of those who are in (a), (b), and (c). That will include your female.

The CHAIRMAN: Subclause (c)?

Carried.

Mr. MURRAY: In this connection what is the age of consent recognized for marriage?

Mr. MACKAY: The ordinary law of the province, I think, prevails mostly.

Mr. MURRAY: I understand that it is different in the northwest territories.

Mr. MACKAY: I would have to get some information on that.

Mr. MURRAY: That is a very important matter. I understand that fifteen is the age of consent in the northwest territories.

Mr. MACKAY: That would be recognized by the Indians themselves.

Hon. Mr. HARRIS: That would be in the ordinance.

Mr. MACKAY: It would be under the northwest territories ordinances.

The CHAIRMAN: Is it not whatever the provincial law says?

Mr. SIMMONS: At fifteen, I understand, they have to have the consent of both parents while at eighteen they have to have the consent of one parent.

Mr. MACKAY: I think the northwest territories marriage ordinance, if I recall correctly, follows very closely the law in the province of Alberta and the province of Saskatchewan.

Mr. MURRAY: I understand it is the age of fifteen, and I suggest that the Indians in that part of the country as in other parts of the country take the marriage contract very lightly.

Mr. MACKAY: They would have to have the consent of parents at fifteen.

The CHAIRMAN: Equal status with white people.

Mr. JUTRAS: I take it that the Indians are all subject to the law of the province as regards their marriage at the present time?

Hon. Mr. HARRIS: Yes.

Mr. JUTRAS: I know in Manitoba in this regard there is some difficulty because of the fact that a blood test is required in our province before marriage can be solemnized and from what I understand there are a great many marriages that cannot be performed because the parties cannot produce a blood test certificate, and consequently a great many just live together without being actually married on that account. Do you know anything about that or have you tried to get around this administration difficulty?

Mr. MACKAY: It has not arisen as far as I know.

Mr. JUTRAS: I would suggest that you look into this because apparently this is a real difficulty in Manitoba and it accounts, I would think, for a great many illegitimate children, whereas these marriages would be performed apparently if that requirement were removed. The difficulty is to take the blood tests. The Indians will not take them and consequently the ceremony cannot be performed and they keep on living together. My suggestion would be to have a blood test taken at the time of the treaty, once a year.

The CHAIRMAN: You mean fifty years ago?

Mr. JUTRAS: No, once a year. They are inoculated for a great many things and a blood test could be taken at the same time and for the purposes of the reserve make that valid for a year, and the marriages could be legalized. I am afraid that if we continue as now we will have a great many illegitimate children on the reserves in Manitoba.

Mr. BLACKMORE: That is dealt with later on in the Act. For the purposes of determining legitimacy, is a blanket marriage, that is, a marriage entered into according to tribal custom, considered a legal marriage?

Hon. Mr. HARRIS: That question came up at the conference and unfortunately at the time my officials were both out, but my preliminary examination allowed me to make an answer that there was a deadline made in the 1920's and that previous to that time the marriage according to tribal customs had been recognized, but since that time it had not been recognized.

Mr. APPLEWHAITE: Since that date whenever it was a marriage to be recognized under the Act it would have to be performed by someone authorized in the province to perform the act.

Mr. T. R. L. MACINNES: (Secretary of Indian Affairs Branch): I do not think that an Indian marriage was ever recognized as against a legal marriage under the provincial laws.

Hon. Mr. HARRIS: I think Mr. Blackmore had in mind one marriage rather than competition between two forms of marriage.

Mr. HARKNESS: What is the definition of legitimacy as it is understood in this Act? I would take it from this that a marriage according to an Indian custom which was entered into some time prior to 1926 or whatever the date was, that the children of that marriage were looked on as legitimate and any marriage entered into by tribal customs since that time is not a legitimate marriage. Is that correct?

Mr. W. CORY (Departmental Solicitor): The last information from the Department of Justice was to the effect that with respect to the so-called blanket marriages, or marriages according to tribal customs, if the parties lived together as man and wife over a period of years that was to be considered as a valid marriage.

Mr. BLACKMORE: I did not get the full remarks of Mr. Cory.

The CHAIRMAN: Would you repeat that, Mr. Cory?

Mr. CORY: With respect to a blanket marriage, or a marriage by tribal custom, if it is quite clear that the parties have lived together as man and wife, and brought up their family, the view of the Department of Justice is that that marriage should be treated as a valid marriage.

Mr. HARKNESS: That still is the situation?

Mr. CORY: That is still the situation. On the other hand, if you have a marriage by tribal custom or blanket marriage and the parties live together for two or three years, and have children, then they separate and go through another form of tribal marriage, then the Department of Justice says that if you have that that is not a valid marriage.

Mr. HARKNESS: Your definition of legitimacy is rather blasted then?

Mr. BLACKMORE: I was wondering, Mr. Chairman, if we could hear the words that Mr. MacInnes used.

Mr. MACINNES: We had occasion to refer this question to the Department of Justice in connection with the payment of separation allowances to Indian soldiers during the war and the opinion was along the line that Mr. Cory has explained, but I think it was also understood that this would not apply as against provincial laws and did not apply as to inheritance, legal inheritance by heirs.

Hon. Mr. HARRIS: Could we leave that and in the meantime we will get a written opinion as to the various forms of marriage that would be recognized and present it to the committee.

Mr. HARKNESS: I should think there should be something in the interpretation section as to what legitimacy means as used in this Act.

Hon. Mr. HARRIS: When you see the opinion we might consider whether it should be incorporated or not.

The CHAIRMAN: So clause 11 (*d*) stands.

Mr. BLACKMORE: I understand the minister expects to have a statement for us?

The CHAIRMAN: Yes, that applies to clause 11 (*d*).

Mr. HARKNESS: Why is it that only a male person is described?

Hon. Mr. HARRIS: Now, there are only two cases which can arise. If the child is born of a white woman we are not going to make him an Indian because the father was an Indian. If he was born to an Indian woman illegitimately, he remains an Indian because he is an illegitimate child of an Indian woman.

Mr. HARKNESS: Yes, but you will have the case probably of a man who is of Indian blood but who does not appear on the band list. In other words, the woman is not living with an Indian who does belong to a band; he lives with that woman by marriage according to tribal custom or a common law wife, there are children born. In that case those children are all Indians?

Hon. Mr. HARRIS: They are if he was an Indian and there was a proper marriage.

Mr. HARKNESS: I am taking the case where it is not a proper marriage and from now on the marriage will have to be one that is solemnized according to the laws of the province in order to have it stand up. What then is going to happen to those children? What is more, it is a practical difficulty: where are those children going to go, and what is going to happen to them?

Hon. Mr. HARRIS: Perhaps we should let that one stand and consider it later.

Mr. HARKNESS: There is another point in connection with it besides that. In the case where the registrar is satisfied that the father of the child was not an Indian, he is satisfied the father of the child was a white man, then what happens to the child? Who is going to educate that child, look after it and so forth? The woman is an Indian who is on a reserve but the registrar has decided that the father was a white man and therefore the child is not an Indian.

Mr. MacKAY: But the registrar would not decide that the father was white without having some admission of paternity. He would have to find some evidence and, of course, if he secures the necessary evidence that the child is white then the child is the responsibility not of the Indians but of the province or the municipality concerned. In the absence of evidence of paternity the child would, of course, take the status of the mother.

Mr. HARKNESS: Of course, the evidence of paternity which has been taken in some cases is pretty doubtful.

Mr. MacKAY: Well, I cannot imagine a man giving evidence to the fact that he is the father of the child if he is not.

Mr. HARKNESS: You remember the MacDonald report? There were certain Indians that were put out of band membership on the evidence of two or three Indians that the father was a white man. Whether that evidence was correct or not, I do not know, but it was pretty slim evidence, particularly having regard to the lapse of time.

Mr. MacKAY: Yes, but today we have to have pretty clear cut evidence of paternity before the department will make a decision. In the majority of cases we are not able to establish paternity, in by far the majority of cases.

Mr. HARKNESS: However, in some cases you know you did take it that paternity was white on evidence of that kind.

Mr. MacKAY: That was some years ago, during the time of the MacDonald report.

Mr. MURRAY: Could it not be determined by blood tests?

Mr. MacKAY: I do not think so.

The CHAIRMAN: Subclause (e) of clause 11 is the one we are on now. That is standing for further information.

Subclause (f).

Mr. APPLEWHAITE: Subclause (f) says that this woman is entitled to be registered if somebody else is entitled to be registered; in the case of the widow, who is the widow of a person who was entitled to be registered. Would a person who is dead be entitled to be registered, I do not want to be funny, or should the Act read "is or if living—"?

Hon. Mr. HARRIS: We cleared with the Department of Justice.

The CHAIRMAN: Subclause (f)?

Carried.

Clause 12 (1):

12. (1) The following persons are not entitled to be registered, namely,

(a) a person who

(i) has received or has been allotted half-breed lands or money scrip,

(ii) is a descendant of a person described in subparagraph (i),

(iii) is enfranchised, or

(iv) is a person born of a marriage entered into after the coming into force of this Act and has attained the age of twenty-one years. whose mother and whose father's mother are not persons described in paragraph (a), (b) or (d) of section eleven,

unless, being a woman, that person is the wife or widow of a person described in section eleven, and

(b) a woman who is married to a person who is not an Indian.

Hon. Mr. HARRIS: The objections to clause 12 are several in number. The Jesuit Indian Missionaries of Ontario at Fort St. Marie, Ontario, suggest that:

This should be reconsidered in view of difficulties and injustices which missionaries feel would be entailed. A man or woman brought up on an Indian reserve, irrespective of his or her blood-content, should be allowed to remain on the register. Missionaries suggest that to deprive such persons of any assistance or protection would cause hardship 'even a cruelty equivalent to that inflicted upon the displaced persons of Europe', and such persons will generally find it impossible to found their homes in organized non-Indian communities. Hence this section might easily impede the obtaining of the end for which the bill is intended, namely, the betterment of the country as a whole.

The Mobert Indian Reserve of Mobert, Ontario, was opposed to this section; the Fort William Mission Indian Reserve of Fort William, Ontario was also opposed to this section. The Golden Lake Band, of Ontario, and Bishop Ragg, of Calgary, Alberta, objected. All object to it for one reason, that is, they are just opposed to it. Cook's Ferry Band, Nicola Indian Agency, of British

Columbia suggest that Indians of one-quarter blood should be allowed to remain on the reserve—consider Indians of mixed blood very progressive. And at the conference we had the objection also from the Indian Association of Alberta.

Now, the purpose of clause 12 is not to register persons of one-quarter blood in the future, that is, after twenty-one years after the passing of this bill, and after a period for a marriage. In other words, it only applies to persons who are born of a marriage after this Act comes into effect. It is designed to see that persons of one-quarter blood are not Indians.

Mr. GIBSON: This applies to children not yet born.

The CHAIRMAN: Is subsection (1) carried?

Carried.

Subsection (2)?

Mr. BLACKMORE: I wonder if I might ask one question. Did the majority of the Indians at the council favour section 12?

Hon. Mr. HARRIS: There was only one objection and that was made by the Indians of Alberta, through Mr. Laurie.

The CHAIRMAN: Mr. Laurie is white.

Hon. Mr. HARRIS: They came prepared to object thinking that it applied to one-quarter bloods now on the reserve. When they found it only applied to the future they did not object.

Mr. APPLEWHAITE: Would you explain subsection (2), please?

Hon. Mr. HARRIS: When an Indian becomes enfranchised we have been in the practice of giving him a certificate to that effect. We thought that where a person had the former status of an Indian, and had apparently lived on a reserve, but it was found that he was not entitled so to do, he might want to have a certificate.

Mr. APPLEWHAITE: But it says you are going to issue a certificate to an Indian to whom the Act ceases to apply. Most people covered under this are not Indians. If you come to the conclusion that I am not an Indian and you expel me from the register then you cannot issue me a certificate because this section says you may issue a certificate to an Indian.

These people are not Indians.

Hon. Mr. HARRIS: They cease to be Indians upon the determination of their case.

Mr. APPLEWHAITE: They never were; you decided that in some cases.

Hon. Mr. HARRIS: The determination of that takes effect from the time of the determination. If you think we should change it to "a person" we will give consideration to it.

Mr. APPLEWHAITE: I think so.

The CHAIRMAN: The suggestion is that "Indian" be changed to read "a person". Shall (2) as amended carry?

Carried.

Mr. HARKNESS: We have not finished with clause 12.

The CHAIRMAN: We have but perhaps you have not.

Mr. HARKNESS: The last one we had was 12 (1) (a).

The CHAIRMAN: I called (2).

Mr. HARKNESS: As far as section (a) (iv) is concerned it would cut out any person from being an Indian whose family ancestors were not considered legitimate. It would not matter how much Indian blood they had. You say the

purpose is to cut out one-quarter bloods in the future. As far as I can make out (a) (iv) would cut out any person even though he were entirely an Indian if his family ancestors were not considered legitimate. It says here:—"whose mother and whose father's mother are not persons described in paragraph (a), (b) or (d) of section 11."

(b) of course is an illegitimate child and (a) and (b) we do not need to go into. They are people who are recognized as Indians and there is no argument on that, but this clause means that any person, even though entirely of Indian blood, is cut out if his mother and grandmother were not considered legitimate.

Hon. Mr. HARRIS: We are going by persons who are Indians under the definition contained in the Act, and we do not try to find out how much so-called Indian blood there may be in a given Indian. We provide for band membership on the basis of legitimacy of marriage and where, as it says here, there are two successive mothers who are not of Indian status according to the Act, then the issue of that later marriage is undoubtedly one-quarter blood for our purposes.

Mr. HARKNESS: It may not.

Hon. Mr. HARRIS: We say yes.

Mr. HARKNESS: Well the point I am getting at is whilst your purpose in this is to prevent any quarter bloods or less in future from being regarded as Indians, actually under this particular subparagraph you can put out of Indian status people who are entirely of Indian blood.

Hon. Mr. HARRIS: We are putting out of status today people who think they are entirely Indian. We do not admit to the band lists certain persons although they may very well have fifteen-sixteenths of what you would call Indian blood—we do not admit them if they are not Indians according to the definition.

Mr. HARKNESS: But if the purpose as you stated is in future to cut out people of less than one-quarter Indian blood, why have you in the section of the Act cut out people who may be entirely of Indian blood solely on account of the fact that the person's mother and grandmother are not considered legitimate—particularly as there is considerable ambiguity about "legitimacy".

Mr. APPLEWHAITE: It only refers to (a), (b) and (d).

Mr. HARKNESS: You say it does not include (d)?

Mr. WHITESIDE: It includes (d) but not (c)?

Mr. HARKNESS: That is right, and it does not include (e). In other words the fact is, as I see it, that if for any reason the mother and grandmother are to be considered illegitimate then the person is cut out.

Hon. Mr. HARRIS: If they are illegitimate persons who are not entitled to be members in the first instance then naturally you would not expect us at a later stage to put back into this Indian Act people whose parents themselves were not Indians.

Mr. APPLEWHAITE: I think perhaps the minister could settle the question if he could answer why sub-paragraph (e) of clause 11 was not included in clause 12(1) (iv)?

Hon. Mr. HARRIS: You mean that we should include (a), (b), (d) and (e)?

Mr. APPLEWHAITE: I am not saying you should.

Mr. HARKNESS: If you include (e) you would get away from the question we have brought up.

Mr. WHITESIDE: We do not want to get away from it.

Hon. Mr. HARRIS: We will have a look at that; let it stand for the moment.

The CHAIRMAN: We will let subsection (iv) stand.

Mr. HARKNESS: I think the whole section should stand because any change made in that will have an effect—

The CHAIRMAN: Are you satisfied with (2) as amended?

Carried.

Clause 13 (1), admission to bands of persons on general list?

Carried.

13(2), transfer of band membership.

Carried.

Clause 14, woman marrying outside band ceases to be member.

Carried.

Clause 15.

15. (1) Subject to subsection two, an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from His Majesty

(a) One *per capita* share of the capital and revenue moneys held by His Majesty on behalf of the band, and

(b) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the band and His Majesty if he had continued to be a member of the band.

(2) A person is not entitled to receive any amount under subsection one

(a) if his name was removed from the Indian register pursuant to a protest made under section nine, or

(b) if he is not entitled to be a member of a band by reason of the application of paragraph (e) of section eleven or subparagraph (iv) of paragraph (a) of section twelve.

(3) Where by virtue of this section moneys are payable to a person who is under the age of twenty-one, the Minister may

(a) pay the moneys to the parent, guardian or other person having the custody of that person, or

(b) cause payment of the moneys to be withheld until that person reaches the age of twenty-one.

(4) Where the name of a person is removed from the Indian Register and he is not entitled to any payment under subsection one, the Minister may, if he considers it equitable to do so, authorize payment, out of moneys appropriated by Parliament, of such compensation as the Minister may determine for any permanent improvements made by that person on lands in a reserve.

Mr. NOSEWORTHY: Just what is the status of the Indian who becomes enfranchised under the Act?

Hon. Mr. HARRIS: The act of enfranchisement deprives him of any right he had as a member of a band and, conversely, he acquires freedom from the restrictive provisions of the Indian Act.

Mr. NOSEWORTHY: In other words no Indian can become a Canadian citizen and remain a member of a band?

Hon. Mr. HARRIS: Certainly he can; he was born a Canadian citizen.

Mr. NOSEWORTHY: He is not entitled to full privileges of citizenship though?

Hon. Mr. HARRIS: What citizenship right does he lack at the moment?

Mr. NOSEWORTHY: What is the significance of saying when he becomes enfranchised he is not any longer a member of the band?

Hon. Mr. HARRIS: Just that he is not any longer entitled to go to band meetings and vote on matters of the band. It is not the only distinction. He has certain property rights in the property of the band which he forgoes on enfranchisement. He has certain rights of participating in the proceedings and voting on anything that comes before the band. It is a little bit as if you were to remove yourself from the city of Toronto to a town in your own constituency. You would lose your rights to vote in Toronto but you would gain them elsewhere.

Mr. NOSEWORTHY: In other words he forgoes most of his rights as an Indian—his right to live on any reserve. May he join another band?

Mr. BLUE: He is paid off; he gets his share out of the band funds.

Mr. NOSEWORTHY: But to all intents and purposes he ceases to be an Indian?

Hon. Mr. HARRIS: He ceases to be subject to the Indian Act and the Indian Act administration. If you will, he quits one club to join another one.

Mr. NOSEWORTHY: He is out on his own.

Mr. MURRAY: He proceeds to a higher degree.

Hon. Mr. HARRIS: I do not think there are any citizenship rights which he lacks today.

Mr. NOSEWORTHY: Has an Indian the right to vote and still remain a member of the band?

Hon. Mr. HARRIS: Yes.

Mr. NOSEWORTHY: To vote in provincial and federal elections?

Hon. Mr. HARRIS: Not provincial—although yes, in some cases. He can vote in British Columbia.

Mr. BLACKMORE: If he becomes enfranchised he becomes subject to every form of taxation.

Hon. Mr. HARRIS: That is right.

The CHAIRMAN: Shall 15(1) carry?

Hon. Mr. HARRIS: May I present the objections. The Six Nations of the Grand River, Brantford, objected to this on the grounds that they say the legal right to grant or pay moneys to any Indian from band funds is objected to since funds were established for the benefits of their people. The people that apply for enfranchisement have not in any way contributed to the establishment of those funds and the council therefore request that their contention be placed before the law officers of the Crown for a ruling on the legality of such disbursements.

The band council of the Shubenacadie Indian reserve N.S. says that Indians should not be forced to enfranchisement—they are not sufficiently advanced.

The Committee of Friends of the Indians of Alberta recommend that provisions be made for a probationary period instead of the provisions of Section 15, and say that the Indians would feel more secure if provisions were made for their return to the reserve within a probationary period of five or ten years without loss of their rights on the reserve.

Now then the objection to the first part of 15, the per capita grant, was also made by representatives of the Six Nations at the conference. However I pointed out to them that if they felt there was no power in the government of Canada to grant this per capita share of the per capita funds they could very easily stop it in the courts if they wished to. The representative was satisfied with the explanation.

Mr. GIBSON: He gets no capital value of his share of the reserve. He just gets his share at the time he leaves; no further capital on his share of the land?

Hon. Mr. HARRIS: He gets no share of any disposition of the lands of the reserve made later for those who remain members of the band.

Mr. GIBSON: Eventually the last man who is enfranchised might be a pretty well off man?

Hon. Mr. HARRIS: That is quite true.

Mr. JUTRAS: What was that?

Mr. GIBSON: The last man might be pretty well off?

Mr. JUTRAS: But what about when he leaves?

The CHAIRMAN: He would have it then.

Mr. JUTRAS: Well take one individual who goes out today. He just takes his per capita share. When the last one goes there is only his share left in the capital fund.

The CHAIRMAN: The reserve can be there, the same as it was in my constituency. They divided—sold the reserve and divided the proceeds among the Indians there. It would go to the survivor.

Mr. GIBSON: If he stayed there he would have a lot of shares.

The CHAIRMAN: Are we agreed on 15(2)?

Carried.

Subclause (3)?

Carried.

Subclause (4)?

Mr. HARKNESS: Were you going to say anything about this number 4, Mr. Harris?

Hon. Mr. HARRIS: No, I have no objections to subclause 4, although I will make sure. No, no objections.

Mr. HARKNESS: There is no guarantee that a man who makes permanent improvements and then becomes enfranchised will get any return on those improvements?

Hon. Mr. HARRIS: Well there is no permanent guarantee in the sense that we do not say here in the statute that he shall receive any fixed proportion of the value of his improvements. However, I do not think there is a case where he does not receive compensation if he is entitled to it.

Mr. HARKNESS: Well, it is entirely at the discretion of the officials of the department whether he receives compensation or not—under this subclause (4), is it not?

This section 4 would be a deterrent to anyone becoming enfranchised if he had made any permanent improvements.

Hon. Mr. HARRIS: This has nothing to do with enfranchisement.

Mr. HARKNESS: Why not? If he becomes enfranchised his name is removed from the register?

Hon. Mr. HARRIS: The enfranchisement clauses are 109, 110, 111, and they deal with the settlement of his claims upon enfranchisement. It is true upon enfranchisement his name will be removed from the register but this clause has to do with those persons who are removed by the operation of sections 5 to 15 dealing with names which are struck off, after they are on, by reason of fraud or matters of that kind.

Mr. MacKAY: It has to do with a man who, for instance takes up his residence on an Indian reserve without having land allotted to him in the regular way, and subsequently is found to be of non-Indian status. During the period he has lived there has made improvements, and this section is to provide compensation for him for the improvements that he has made.

Mr. GIBSON: Did you decide that parliament should appropriate that money out of the Consolidated Revenue Fund rather than taking it out of the band funds? After all, they get the benefit of those improvements. Did you decide it was better this way?

Mr. MACKAY: There are a good many bands without any funds.

The CHAIRMAN: Shall subclause (4) carry?

Mr. HARKNESS: Well, it is entirely discretionary whether he receives any compensation or not and I think that was hardly fair unless he had the right to appeal and have it determined by a court.

Hon. Mr. HARRIS: He is a person who in the first instance has no rights.

Mr. HARKNESS: That is what you say now, but cases come up such as that in Alberta where several hundred people in northern Alberta considered themselves Indians for a very long time, and they were suddenly thrust out of Indian status. That is the type of person to whom this would apply.

Mr. MACKAY: It is a question of whether those persons, Colonel Harkness, had made substantial improvements on the reserve.

Mr. HARKNESS: Whether it is questionable about those people or not, nevertheless cases can readily occur where men would have made considerable improvements, and it would seem to me that they should have the same right and not just be at the discretion, essentially, of the officials of the department. Naturally the minister is not going to know anything about these cases personally?

Mr. MACKAY: Is it not your difficulty that you are dealing with a group of people who have been found not to be entitled to do what they are doing? They will vary all the way from the chap who was warned before going that he would not be so entitled but nevertheless decided to take his chance, all the way down to the person who in all innocence put improvements on that land thinking he was entitled so to do. To take care of all of those groups I doubt if you could devise, by statute, a rule which would apply. There must be some discretion so as to make the compensation accordingly. Certainly I am quite sure that you would call the minister to account in the House if there was an injustice. I think this is as good a protection as you can get for the innocent, and you do not need any protection for the relatively guilty.

Mr. HARKNESS: You are dealing with persons who are not innocent but you are also dealing with persons who were innocent and put off the reserve in Alberta anyway. A judge was appointed as commissioner and in a very large number of cases made recommendations in favour of the Indians but those recommendations were never carried out and those people are still off the reserve. They have no recourse and under this they still have no recourse. In other words it is going to apply to people who have been evicted, but according to the judicial commissioner appointed these people should never have been put off the reserve.

Hon. Mr. HARRIS: Under this there is first to be a decision by the registrar and secondly by a county court judge. Supposing the person is not entitled to be on the reserve, are you then going, in every case, to give him compensation to the fullest extent of the claim that he would make?

Mr. HARKNESS: No, naturally, I would not give him the compensation to the degree that he might claim, but I would think that he should have some appeal.

Hon. Mr. HARRIS: From—

Mr. HARKNESS: From essentially the decision of the officials of the department.

Hon. Mr. HARRIS: As to the amount of the improvement?

Mr. HARKNESS: Yes, that is whether he should get any compensation or not on the amount of improvements.

Mr. ASHBOURNE: Does not this protect him and give him some rights?

Mr. MACKAY: Of course you have the case of white people who deliberately go to reserves. They may have been encouraged by some of the Indians to take up residence on the reserve. They go there, and establish themselves. This applies particularly to some of the remote areas, and those people use Indian lands over a period of years. Suddenly, we are confronted with the fact that they are in trespass and have no right there and they must be removed. Are you going to compensate them?

Mr. HARKNESS: I would not compensate that individual but the fellow I am thinking of is the fellow who has considered himself an Indian from his birth. Then, he is suddenly told that he is not an Indian and he is put off the reserve. He can be compensated or not compensated to quite an extent just depending on whether the agent likes him or does not like him. In other words I do not see any reason why he should not have an appeal to a county court judge in the same way that an Indian has an appeal over whether he should be put off the band. At the same time he has an appeal over whether he should be put off he could enter his claim for his improvements. Is there any reason why he should not be able to appeal? If he is the type of case Major MacKay has mentioned, of a white man who has just moved on a reserve, naturally, the judge is going to throw his case out. He would have no ground for compensation either. On the other hand, if he is a man who has lived on a reserve all his life and considers himself an Indian until he is pushed off, then he should have some appeal?

Mr. NOSEWORTHY: If his appeal is not sustained in court what legal ground has he for claiming compensation?

Hon. Mr. HARRIS: I was going to say on what ground has he any right to his improvements if he is not a member of the band—except compassionate grounds.

Mr. HARKNESS: He has been considered a member of the band and has been treated as an Indian for a number of years and then he is suddenly pushed out.

Hon. Mr. HARRIS: That is a matter of compassion, for decision after the decision is made as to his status.

Mr. HARKNESS: During the time he has been a member of the band he made improvements on the land and under this he may or may not be compensated for those improvements. He may be compensated or compensated very little, but I see no reason why he should not have an appeal. For example, in ordinary law, if a white man goes and squats on a piece of land, as you know, if he is there for a number of years he establishes squatter's rights and the land is ordinarily allotted to him.

Mr. MURRAY: In what province?

Mr. HARKNESS: In our province, Alberta. I think it is true in almost every other province.

Hon. Mr. HARRIS: If you tried to assert that you would have every band council in this country coming down to protest.

Mr. HARKNESS: I am not trying to assert that. I am saying that is the law as far as white persons are concerned.

Hon. Mr. HARRIS: You are trying to import that into the law here?

Mr. HARKNESS: No, I am not. As I have said several times the person I am thinking of is the man who has been looked upon as an Indian and then is put out of Indian status.

Hon. Mr. HARRIS: The number of cases in which that will arise have been perhaps unusual in your province but the number of cases in which a person

will cease to be an Indian when he has been for a long time considered an Indian will undoubtedly be very few compared to the total to be dealt with. If you are not prepared to leave it to ministerial discretion to make allowance for improvements then you might try to amend this by a definition which would cover the gentlemen you have in mind. However, we have considered this and we have concluded that for the rare number of cases you have in mind it would be better if the discretion was there to grant compensation on compassionate or other grounds and I think you could hold us to that.

Mr. HARKNESS: What objection would there be to adding there the right of appeal to a county court judge?

Hon. Mr. HARRIS: The objection would be you have not defined his rights.

Mr. APPLEWHAITE: On the other side of the picture I would take it there is no way of charging him for the benefits that he has had for those years.

Mr. MURRAY: What improvements did you have in mind?

Hon. Mr. HARRIS: Buildings.

Mr. MACKAY: Yes, and the land.

Hon. Mr. HARRIS: He has cultivated the land—

Mr. MURRAY: He has probably injured the land as well.

Mr. HARKNESS: In many cases the clearing of the land is expensive.

Mr. VALOIS: As a matter of fact in the province of Quebec if such an appeal were to be allowed, the Indian, or the person who is really entitled to the land, would not stand much chance to get any compensation for his improvements inasmuch as he could not show that he was there in good faith. As a matter of fact, we have a whole section of the civil code dealing with that problem, so as far as I am concerned I think the person falling in with that case would be better off with the decision of the minister than with the decision of the court. We will be bound by the laws of the land from a practical point of view.

Mr. MACINNES: The point is that the provisions of your civil code do not apply to these Indian reserves.

Mr. VALOIS: I am not so sure about that.

Mr. HARKNESS: I think the minister will bear me out on that.

Hon. Mr. HARRIS: No, I am afraid I cannot because the status of Indian lands in the province of Quebec is rather unusual.

Mr. HARKNESS: Certainly in our province that would be the situation.

Mr. NOSEWORTHY: Could you meet that difficulty by having some sort of a body organized to decide with the minister? That is not feasible, I suppose?

The CHAIRMAN: Subclause (4) of clause 15?

Carried.

Clause 16 (1), transfer of funds:

16. (1) Section fifteen does not apply to a person who ceases to be a member of one band by reason of his becoming a member of another band, but, subject to subsection three, there shall be transferred to the credit of the latter band the amount to which that person would, but for this section, have been entitled under section fifteen.

Hon. Mr. HARRIS: We had one objection to clause 16 from the Black Feet Band.

The CHAIRMAN: Clause 16, subclause (1)?

Carried.

Subclause (2),—transferred member's interest in lands and moneys?

Carried.

Subclause (3):

(3) Where a woman who is a member of one band becomes a member of another band by reason of marriage, and the *per capita* share of the capital and revenue moneys held by His Majesty on behalf of the first-mentioned band is greater than the *per capita* share of such moneys so held for the second-mentioned band, there shall be transferred to the credit of the second-mentioned band an amount equal to the *per capita* share held for that band, and the remainder of the money to which the woman would, but for this section, have been entitled under section fifteen shall be paid to her in such manner and at such times as the Minister may determine.

Hon. Mr. HARRIS: The Black Feet Band objected to this that the money should not be transferred with the woman when she marries into another band. The question was discussed at the conference as well and the emphasis was all the other way, that she should have her money.

Mr. GIBSON: She will get some cash out of it in certain instances?

Hon. Mr. HARRIS: Yes.

The CHAIRMAN: Subclause (3)?

Carried.

Clause 17 (1):

17. (1) The Minister may, whenever he considers it desirable,

- (a) constitute new bands and establish Band Lists with respect thereto from existing Band Lists or General Lists, or both, and
- (b) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated.

Hon. Mr. HARRIS: There was an objection to the original section but when we made a minor change in it and the amalgamation of bands is now provided for by the vote of a majority of their electors.

Mr. APPLEWHAITE: Would you repeat that, please?

Hon. Mr. HARRIS: In clause 17 (1), (b), you will find we have the words "by a vote of a majority of their electors," otherwise that band cannot be amalgamated.

Mr. NOSEWORTHY: Has the band anything to say under clause 17 (1) (a)?

Hon. Mr. HARRIS: There is no band under (a) until we constitute it a band.

Mr. NOSEWORTHY: A new band from existing bands lists which must mean the breaking up of existing bands.

Hon. Mr. HARRIS: No, they are advised and their wishes will be observed. Of course, as far as possible it sometimes becomes advisable to divide them for administrative purposes and especially when they are split up in groups around the country. Sometimes they live quite a distance apart.

The CHAIRMAN: Clause 17 (1)?

Carried.

Clause 17 (2), division of reserves and funds?

Carried.

Clause 18 (1), reserves to be held for use and benefit of Indians:

18. (1) Subject to the provisions of this Act, reserves shall be held by His Majesty for the use and benefit of the respective bands for which they were set apart; and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

Mr. HARKNESS: Were there any objections to that?

Hon. Mr. HARRIS: There were some general objections: Indians of The Pas, Chemawawin, Matthias Colomb, Moose Lake, Red Earth, Shoal Lake and Split Lake Bands, Manitoba:

Changes in these sections unanimously agreed to;
Indian War Veterans' Association of Wikwemikong, Ontario:

Disapprove renting land to non-members unless individual so desires;
President, North American Indian Brotherhood:

Suggest that no Indian reserve or portion of a reserve shall be sold, alienated, leased, or otherwise disposed of without the consent by secret ballot of the majority of the male and female electors of the Indian owners for whose use and benefit in common the reserve was set apart—which is a general statement I think we can discuss in detail later.

Again, the Indian Association of Alberta:

Suggest the word "entrust" be substituted instead of "surrender." That is all. There is no objection to clause 18 as such, as it now stands.

Mr. NOSEWORTHY: This just permits the department to take over Indian lands for the use of school buildings or hospitals? It does not permit the government to dispose of these lands to outside parties.

Hon. Mr. HARRIS: No.

The CHAIRMAN: Subclause (2), use of reserves for schools, etc?

Carried.

Mr. HARKNESS: No, no, in clause 18 (1) the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band. Has the band council or the band itself by means of a general vote not got anything to do with that?

Hon. Mr. HARRIS: Perhaps you might be a little more specific as to the kind of problem you have in mind.

Mr. HARKNESS: I was not thinking of any particular problem, but any use of the land in the reserve might be put to I would think should be primarily a matter for the determination of the people of that band itself.

Hon. Mr. HARRIS: You will notice the qualification in clause 18 where it says, "subject to the provisions of this Act," and it goes on:

and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.

Mr. NOSEWORTHY: What is there in this Act to prevent the Governor in Council from taking any block of land in a reserve that it deems necessary for such purposes? Are there any restricting clauses in the Act itself?

Hon. Mr. HARRIS: No, subclause (2) provides the purposes for which the Governor in Council may take the land and provides for the payment of compensation as well.

Mr. NOSEWORTHY: In other words, there are no provisions in the Act that restrict the Governor in Council in any way if they decide that certain lands are required for any one of these purposes, they can take them without consultation or consent of the Indians.

Hon. Mr. HARRIS: They can but I think it would be an extremely unwise thing if they did.

Mr. HARKNESS: That was the very point I was getting at. It seems to me that the band itself or the band council—that it should be a matter of their consent.

Hon. Mr. HARRIS: It should not be a matter of their consent, it should be a matter of consultation. If you have to build a hospital on a reserve and the band council refuses and continues to refuse to give what you consider the best location, there must come a time when the Governor in Council will exercise his judgment with regard to the welfare of the people there. That not only applies to the reserves but it also applies to us. The provincial and federal governments and municipalities can expropriate our lands. They may be subject to adverse public opinion when they do something unpopular, but nevertheless private land can be expropriated.

Mr. HARKNESS: In clause 18 this matter of the compensation to be paid to an Indian for lands that are taken and which were formerly in use by him, in such amount as may be agreed between the Indian and the minister, or failing agreement, as may be determined in such a manner as the minister may direct. It seems to me the Indian should have the right of appeal. It is one-sided. This, and the other one are both one-sided arrangements. If they come to an agreement well and good, and if they do not the Indian will have to take what he can get.

Hon. Mr. HARRIS: There is this difference. In this section, as you see, we admit the right of the Indian to compensation for the land taken from him, and we provide that where agreement cannot be reached, then the minister must direct some method of ascertaining the amount due him. That might take the form of an arbitration, or judicial proceedings, or any other form, but there is a right in the Indian here when there was not in the other case.

Mr. NOSEWORTHY: If you carry through the analogy and you regard Indians as white people, where it becomes necessary by the provincial government to expropriate land, is the white person in that case left at the mercy of the lieutenant governor in council or is there not definite provision of the procedure to be followed?

Hon. Mr. HARRIS: Yes, there is an Arbitration Act in every province, I think, and in most cases it is resorted to unless the expropriating by-law or order in council may direct other proceedings. However, the number of expropriations we have under the Indian Act are so few in number we are not going to pass a special Act for it.

Mr. NOSEWORTHY: Is it possible to set up under the Act some procedure or regular formula by which a dispute of that form may be settled without leaving it entirely to the authority of the Governor in Council?

Hon. Mr. HARRIS: The authority of the Governor in Council is not with respect to compensation.

Mr. APPLEWHAITE: I would not like to see a set procedure set out because the bands are isolated in some cases and in some cases an arrangement of that kind would be ideal and it would be hopelessly inadequate in another.

Mr. NOSEWORTHY: Is not the amount of compensation in cases where an agreement cannot be reached to be determined exclusively by the Governor in Council?

Hon. Mr. HARRIS: That is covered in the last three lines "or, failing agreement, as may be determined in such manner as the minister may direct."

Mr. NOSEWORTHY: The minister has the authority to direct how that amount shall be fixed?

Hon. Mr. HARRIS: That is right. He may set up a board of arbitrators composed of real estate people in the immediate neighbourhood or he may appoint a local county court judge, or take other similar steps.

The CHAIRMAN: He sets up the machinery but does not make the decision.

Mr. MACINNES: Or on the other hand, he may direct the agents to assess the value of the land.

Mr. MacKAY: He can do that but it is a very very rare case when it would be done.

Hon. Mr. HARRIS: We would hear about it in the House of Commons if we did.

Mr. NOSEWORTHY: The criticism that I have here of this Act, that I have seen, is that it does not give the Indians sufficient opportunity to become familiar with the working of our democratic system as it exists at the municipal level and I think we should try wherever it is feasible to pass some responsibility back to the band or to the people living on the reserve if it is possible. I do not see why the Indians should not be entitled to some definite formula that would be valid so that a matter of this kind could not just be turned over by the minister or the Governor in Council to the agent to settle, as might very well happen.

Hon. Mr. HARRIS: This is a new provision in this bill that is not in the old Act, that is giving advantage to the Indian, and we have provided that the minister may direct a particular procedure in any case for the determination of that question.

Now, if in the experience we gain we find that this is not appropriate, that it is better to order the Indian from the Great Slave Lake area to go down with a trainload of witnesses to Edmonton, we might come to do that, but it might be a prohibitive cost. But I suggest you will through experience gained in the administration of this Act be able to decide what is best in any particular case rather than write in a formula now which you would have to depart from.

Mr. HARKNESS: Would you think of putting in after "failing agreement," the agreement may be determined by an outside body in such manner as the minister may direct. In other words, what I am trying to get away from is from a thing that the Indians have been subjected to for many years, that the Indian is not going to be left to have things decided by the officials of the department.

Hon. Mr. HARRIS: Well, I think that that state of mind is grossly exaggerated. I might add my experience at the conference was that while there were the usual number of complaints about particular Indian agents, when I asked them deliberately did they want their agents at their council meetings, there was a chorus of disapproval at the minister for thinking they did not, and I suspect there are not so many agents in this country who, in the final analysis, are in such bad standing in the community that they could not be depended upon to do the right thing in nearly every case.

As I say, there was no objection at the conference to this particular procedure. I do think, first of all, that we will not use this section perhaps more than two or three times while you and I are in the House of Commons and the experience we gain from it will allow us to determine the best course in the future.

Mr. HARKNESS: To come back to my question, what objection would you have to putting in some such words as that after "determined"?

Hon. Mr. HARRIS: I take it that what you are trying to do is to eliminate from the body which would determine this question anyone connected with the Department of Indian Affairs. Is that the objection?

Mr. HARKNESS: Well, more or less, yes.

Mr. APPLEWHAITE: I might say I would not like that. I know several reserves in my part of the country are in isolated Indian villages and points

where the only people who are capable of seeing that the Indians get a square deal are the Indian agents and Indian school teachers and people who get up there and know the value of things in those places.

Mr. SIMMONS: I feel, as Mr. Applewhaite does; I think that the people most in sympathy with the Indians are the teachers, the agents, missionaries and so forth who are looking after the welfare of the Indians. By leaving this clause as it is I believe it will be beneficial to the Indians in general.

Mr. HARKNESS: Of course, following this argument, the conclusion we would come to is that we should not pass any legislation at all, just leave it to the agents of the department—that is, following that line of argument.

Hon. Mr. HARRIS: No. You are mistaking the few rare cases that would come under clause 18 and the great mass of people we must legislate for.

Mr. MACKEY: This is to provide mainly for schools and hospitals and other services that the department is extending to Indians, and one can, for instance, imagine a school required in a very remote area and the Indian owner of the property that is most suitable for the construction of the school opposes the taking of the area for that purpose.

Well, now, you suggest that we might send some outsiders in there; well, an outsider might not be as familiar with conditions or the value of the property as the local superintendent or others. In valuing Indian lands we frequently call in the local provincial government agent and engineers because, of course, they are called upon frequently to value provincial lands and are in close proximity to the Indian reserves.

Mr. HARKNESS: Basically though I think there is, as a general proposition, what you might call a paternalistic attitude which is going to be continued, but if the Indian is going to be put on the same basis as the white man, if his property is disturbed then he should have the same rights of appeal and so forth.

Mr. APPLEWHAITE: I agree with that but you have some isolated villages whose state of development is that of our settlements of 300 years ago and if paternalism were necessary for the easterner in the early days it is necessary for the Indians now. I would not want to turn them loose.

Mr. MURRAY: I think the building up of law costs on these trivial decisions would not be very fair to the Indians.

Mr. NOSEWORTHY: On this particular point, granted that the department has the right to expropriate the land and they fail to reach an agreement with the Indians, the minister has said the minister may appoint a board of arbitrators, so what is the objection to putting that into the Act so that in any case where there is failure to reach an agreement that an independent body, not necessarily somebody 1,000 miles away from the reserve, but an independent body of people be appointed who know that situation, to determine what should be the value of that expropriated property.

Hon. Mr. HARRIS: Well, I think Major MacKay has given the explanation that there are many reserves in Canada where in fact the only person who has any idea of the value of the land would be someone connected with the Indians, whether he is a school teacher, an Indian agent, or an occasional visiting official of the provincial government who would have the necessary knowledge, and if we were to be put in the position of having to stipulate that none of these persons or one of them, should not be a board to deal with these things you might spend the whole cost of the property transporting the people to the scene to value the land in many cases.

Mr. NOSEWORTHY: You think in many cases there are no local people adjacent or near the reserve or on the reserve?

Hon. Mr. HARRIS: That is the extreme position. If there is someone available of what we might call a neutral standpoint by all means their advice would be obtained as to valuation.

The CHAIRMAN: Mr. Applewhaite, I think brought it out very clearly: in his district there are remote areas where you would not expect valuers to come from Vancouver to give an opinion as to the value of a piece of land.

Mr. APPLEWHAITE: Even the distance from the closest white village might be 120 miles, and there is no contact except through a missionary or an Indian agent.

Mr. BLACKMORE: It seems to me that all things being considered the minister's position is the right one.

The CHAIRMAN: Clause 18 (2)?

Carried.

Clause 19:

19. The Minister may

- (a) authorize surveys of reserves and the preparation of plans and reports with respect thereto,
- (b) divide the whole or any portion of a reserve into lots or other subdivisions, and
- (c) determine the location and direct the construction of roads in a reserve.

Hon. Mr. HARRIS: There is an objection to clause 19. It is set forth in paragraph 19 on the conference proceedings and it reads:

Section 19, dealing with surveys of sub-divisions of reserves, was considered to be very beneficial by some representatives because they felt that it was only through these surveys that an individual owner could definitely establish his claims to land on a reserve. Suggestions were made that in some areas these surveys should be expedited.

However, two other representatives were opposed to this section on the basis that it might lead to allotment. It was indicated that there was no objection to the external surveys of reserves but there was objection to surveys for sub-divisions. For instance, it was pointed out that the Indians in Southern Alberta were not opposed to surveys of reserves, but that the Indians of Central and Northern Alberta definitely were, and that because of this opposition no surveys should be made without the consent of a Band Council

The CHAIRMAN: Does that not mean that if the farms cannot be surveyed you cannot fence them off?

Hon. Mr. HARRIS: That is the point. In southern Alberta the Indians are gradually becoming used to and in fact requesting allotment of land and for that purpose they must have surveys and that is why they are favourable to surveys being made. When the idea is generally acceptable in northern Alberta as to allotment of land no doubt they too will be asking for surveys.

Mr. APPLEWHAITE: At whose expense are these surveys to be made?

Mr. MACKEY: Departmental appropriations.

Mr. BLACKMORE: I wonder if the minister would explain to us why (b) would be justified there? It looks a little bit severe—divide the whole or any portion of a reserve into lots or other subdivisions. I notice no stipulation is made to the effect that the Indians would have any voice in the matter. I wonder if that sort of wording is necessary.

Hon. Mr. HARRIS: We are perhaps confusing what we do in surveying with what we do by allotment. We do not disturb the Indian in the possession of any land he is entitled to but when we survey the land we do mark on it lots and subdivisions of lots so as to determine from that his actual occupation, but someone reading that might get the idea that having completed the survey we would take his land and move him over to some other place because there was some vacant land there.

Mr. GIBSON: You are only getting information?

Mr. NOSEWORTHY: In other words, this would only be a protection?

The CHAIRMAN: It would be of great assistance in surveying for roads, would it not?

Hon. Mr. HARRIS: Yes.

Mr. HARKNESS: Is any consideration given to this proposition that these surveys would only be made with the consent of the band council? .

Hon. Mr. HARRIS: We approach the band councils and hope to obtain their assistance in the carrying out of the survey but we would not want them to be in a position to stop the work at a time when we had the opportunity to do it. We have to fit in the surveying with the work done by the Department of Mines and Technical Surveys. They will say to us, we will be able to provide you with so many survey parties this year in a certain area, and we take advantage of that. If the band council opposes the survey when in fact there is not going to be any disturbance to the band council except the physical disturbance of a survey party, we feel we should go ahead with the work at the time the party is available. As I said, in every case we do our best to get the consent of the band council.

Mr. HARKNESS: The basic point there, I think, is it not that some Indians are very much wed to the fact that all reserves held by the band is common land and if they are surveyed into plots that this is breaking down that idea. I would think the band as a whole does hold that idea strongly that they might be forced, as you might say, into another system.

Hon. Mr. HARRIS: The forcing of another system goes with the allotment, not with the survey.

Mr. MURRAY: Mr. Chairman, it is necessary to survey these reserves where there are villages to lay them out properly, if you are going to bring the Indian up to the level of other people. Now, in regard to water services it is necessary to have a proper survey and an allotment of water. We have that in our district where they now want the water conveyed from certain creeks to townsites. Well, you have the survey made or you go ahead in a haphazard manner laying pipes here and there across the country and in order to avoid that it is necessary to have a survey made.

Mr. BLACKMORE: Mr. Chairman, the Alberta Indian Association finds cause for objection in clause 19, but I must confess I do not exactly see on what justifiable basis they do object. To me, it seems that the matter of roads in our age of automotive transportation is so important that it adds considerably to our way of living.

The CHAIRMAN: Clause 19?

Carried.

Clause 20?

Mr. HARKNESS: It is past 1.00 o'clock.

The CHAIRMAN: Tomorrow we will meet at 4.00 p.m. in this room No. 268. We will also meet at 11.00 o'clock on Thursday morning, April 19.

The committee adjourned.

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Canada Bill No. 79, An Act respecting
Indians Special Committee on, 1951

SESSION 1951

HOUSE OF COMMONS

SPECIAL COMMITTEE

APPOINTED TO CONSIDER

BILL No. 79

AN ACT RESPECTING INDIANS

CHAIRMAN—MR. DON F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

WEDNESDAY, APRIL 18, 1951

WITNESSES:

Hon. W. E. Harris, Minister of Citizenship and Immigration;
Mr. D. M. MacKay, Director, Indian Affairs Branch;
Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch;
Mr. W. Cory, Legal Adviser, Dept. of Citizenship and Immigration.

MINUTES OF PROCEEDINGS

WEDNESDAY, April 18, 1951.

The Special Committee appointed to consider Bill No. 79, an Act respecting Indians, met at 4.00 p.m. this day. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Applewhaite, Ashbourne, Blackmore, Blue, Boucher, Brown (*Essex West*), Bryce, Charlton, Gibson, Harkness, Hatfield, Jutras, Little, MacLean, (*Cape Breton North and Victoria*), Murray (*Cariboo*), Noseworthy, Smith (*Queens-Shelburne*), Simmons, Valois, Welbourn, Whiteside, Wood.

In attendance: Hon. W. E. Harris, Minister of Citizenship and Immigration; Mr. D. M. MacKay, Director, and Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch; Mr. W. Cory, Legal Adviser, Department of Citizenship and Immigration.

The Committee resumed consideration of Bill No. 79, An Act respecting Indians:

Clauses 20 to 27, inclusive, were adopted;

Clause 28: subclause (1) was adopted and subclause (2) was allowed to stand;

Clause 29 stood;

Clauses 30 to 36 inclusive, were adopted;

Clause 37 was allowed to stand;

Clauses 38, 39, 40 and 41 were adopted.

At 6.00 p.m. the Committee adjourned to meet again on Friday, April 20, 1951, at 4 p.m.

E. W. INNES,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

APRIL 18, 1951.

The Special Committee appointed to consider the Indian Act met this day at 4.00 p.m. The Chairman, Mr. D. F. Brown, presided.

The CHAIRMAN: Will you come to order, gentlemen? There will be no meeting tomorrow. There will be a meeting on Friday afternoon, if that is agreeable.

Mr. HARKNESS: Why not Friday morning?

The CHAIRMAN: The reason, I understand, is that the minister has a cabinet appointment.

Mr. HARKNESS: Why do we have these meetings in the afternoons rather than in the morning? I thought when we passed this motion asking for leave to sit while the House was sitting that it was generally understood that we would meet in the mornings unless Mr. Harris had to attend a council meeting; that that privilege was obtained so it would be available at a later date in order to get our work completed, but the way it looks now it would appear that we are going to run into more afternoon meetings than morning meetings. Personally, I do not see that that is necessary at this time.

Hon. Mr. HARRIS: Under normal circumstances we only have a long cabinet meeting once a week, on Wednesday, but occasionally it becomes necessary for us to have one on Friday morning. That is why the meeting is called this afternoon at 4 o'clock and for Friday at 4 o'clock. With the exception of these days I am always available in the mornings.

Mr. HARKNESS: I certainly think we should have our meeting Friday morning rather than Friday afternoon. What about tomorrow morning?

Hon. Mr. HARRIS: I will be in Toronto tomorrow morning.

Mr. HARKNESS: I do not think we should sit in the afternoons any more than we absolutely have to.

The CHAIRMAN: Is it agreed then that we shall meet Friday afternoon at 4 o'clock?

Agreed.

Mr. BRYCE: I hope we will meet mornings as much as possible, because it is more convenient for most of us to attend in the morning.

Hon. Mr. HARRIS: The only occasion on which meetings in the afternoon would be necessary, so far as I am concerned, is on days when we have a long cabinet session.

Mr. HARKNESS: This afternoon is an example. There are some rather interesting things going on in the House.

The CHAIRMAN: Well then, gentlemen, if it is agreeable we will meet on Friday afternoon and on Monday morning at 11 o'clock. Is that agreed?

Agreed.

The CHAIRMAN: We had reached section 20, possession of lands in reserves.

20. (1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

(2) The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

(3) For the purposes of this Act, any person who, at the commencement of this Act, holds a valid and subsisting location ticket issued under *The Indian Act, 1880*, or any statute relating to the same subject matter, shall be deemed to be lawfully in possession of the land to which the location ticket relates and to hold a Certificate of Possession with respect thereto.

(4) Where possession of land in a reserve has been allotted to an Indian by the council of the band, the Minister may, in his discretion, withhold his approval and may authorize the Indian to occupy the land temporarily and may prescribe the conditions as to use and settlement that are to be fulfilled by the Indian before the Minister approves of the allotment.

(5) Where the Minister withholds approval pursuant to subsection four, he shall issue a Certificate of Occupation to the Indian, and the Certificate entitles the Indian, or those claiming possession by devise or descent, to occupy the land in respect of which it is issued for a period of two years from the date thereof.

(6) The Minister may extend the term of a Certificate of Occupation for a further period not exceeding two years, and may, at the expiration of any period during which a Certificate of Occupation is in force

- (a) approve the allotment by the council of the band and issue a Certificate of Possession if in his opinion the conditions as to use and settlement have been fulfilled, or
- (b) refuse approval of the allotment by the council of the band and declare the land in respect of which the Certificate of Occupation was issued to be available for re-allotment by the council of the band.

Shall subsection 1 carry?

Hon. Mr. HARRIS: There are a number of points there. The band council of the Abenakis of St. Francis, Pierreville, Quebec, are opposed to it altogether—I beg your pardon, that is with reference to subsection 4. But that brings up this very point, with regard to subsection 4 that the Kinnosayos and the Cree bands in Alberta feel that the band alone should decide ownership of land. And the Oka Band Council, Quebec, with regard to subsection 2, suggest that it should read: “The minister shall issue . . .” They consider that an Indian lawfully in possession of land has a right to obtain a certificate of possession. Then, the Indian Association of Alberta rejects subsections 4, 5 and 6. The bands of southern Vancouver Island suggest that plans of land allotted be made available to band members. And then, at the conference, we had a further discussion of this—and this relates also to four later paragraphs—21, 25 and 22—they are similar. That is with respect to surveys. And similar opposition was expressed by representatives on section 20(2), dealing with the certificate of possession, the reason being that the allotment system was not suitable in Alberta. Subsection 4 of this section, dealing with temporary possession, was objected to by one of the representatives on the basis of temporary possession, and the feeling of uncertainty that once the land had been allotted to the member by the band council it should be a permanent allotment and not subject to a disability imposed by the minister.

But now, generally speaking, this follows the present Act with respect to the allotment of land. It states (1) “No Indian is lawfully in possession of land in a reserve unless, with the approval of the minister, possession of the land has been allotted to him by the council of the band” and also that this has

received the approval of the minister. There is a provision that where the minister deems it undesirable to grant a certificate of possession he may grant an interim certificate to be known as a certificate of occupation and make certain conditions which if met would qualify the Indian to obtain a permanent certificate of possession. The purpose is obvious. The land may be allotted to a member of the council who has perhaps been unfortunate in his effort to locate; and if it is not embarrassing to local conditions to let him have it on a temporary basis, subject to his conforming to certain reasonable conditions, (i.e.) that he cultivate the land.

The CHAIRMAN: Subsection 1—possession of lands in reserves—shall the subsection carry?

Carried.

Mr. HATFIELD: Mr. Chairman, what is the procedure by which this land is paid for? I have a case in my own constituency where the provincial hydro are building a dam there and infringing on the rights to land on the Indian reserve. What protection has the Indian band against encroachments by organizations such as the Hydro Commission going in there and taking over these lands with the resultant loss of land to the Indian?

Hon. Mr. HARRIS: Well, Mr. Hatfield, that is a matter which perhaps you might better discuss a little later on when we reach section 58, which would be the one which deals with that matter.

The CHAIRMAN: Shall 1 carry?

Carried.

Subsection (2); certificate of possession.

Mr. APPLEWHAITE: Have there been any certificates granted to the Indians of British Columbia?

Mr. MACKAY: No. There have been certificates issued, they are already in force in the Queen Charlotte Islands and in other parts of the province, under this Act previously. Certificates have been issued under certain conditions.

Mr. APPLEWHAITE: Following the passage of this Act is it the intention of the department to start the issue of certificates to cover all cases involved?

Hon. Mr. HARRIS: We shall continue the present practice of issuing certificates there, but on a temporary basis.

Mr. APPLEWHAITE: You are not contemplating any extension of the practice?

Hon. Mr. HARRIS: We require the assent of the band council to the allotment first. The decision has to be made by the band council.

Mr. HATFIELD: What about veterans houses being built on reserves under the Veterans' Land Act?

Hon. Mr. HARRIS: The Indian has to have the land allotted to him by the band council. We have to see that the allotment is made. We are, you might say, the final registry office.

Mr. HATFIELD: Is that a central recording office?

Hon. Mr. HARRIS: A little more than that; it is a land titles office to be exact, and we examine all titles.

Mr. WELBOURN: Is that allotment permanent; does he retain that land forever?

Hon. Mr. HARRIS: He can devise it.

Mr. BRYCE: When we were down there some time ago you will recall that Escasoni had been set up at Shubenacadie; and when we were there there were veterans' houses there.

Mr. MACKAY: Well, of course, Mr. Bryce, that was due to the organization of the new reserve and amalgamation of various groups in Nova Scotia and Prince Edward Island, and this area was chosen as a new site for the reserve and the allotment had been made. I cannot tell you more about it at the moment.

Mr. BRYCE: Take the case of a veteran who builds a house on the reserve, does he receive an allotment?

Mr. MACKAY: Yes, he would have to be allotted land in that particular area.

Mr. BRYCE: And, if he wasn't?

Mr. MACKAY: He would have to have it before he could get possession of the house. It would have to be allotted to him.

Mr. HARKNESS: One of the difficulties we ran into down there was the number of veterans who had been refused land and who wanted to build houses under the Veterans Land Act on the Indian reserve, and they could not build the houses because they were not allotted or could not be allotted land on the reserve. I think that was the chief difficulty there, and the one to which Mr. Bryce was referring.

Mr. MACKAY: I think that is due largely to the fact that it was just a new organization.

Mr. HARKNESS: Has that difficulty been overcome?

Mr. MACKAY: We have reason to think that it has been largely overcome at Escasoni and Shubenacadie.

Mr. HATFIELD: I was referring more particularly to certain areas, certain reserves in the St. John river valley. I don't remember their exact names. What happened there?

Mr. MACKAY: Well, Mr. Hatfield, I think at first the idea appealed to them, getting to a new location where they had a new field, but after they got there they missed their old associations and wanted to go back to them, and I believe most of them are now back. The original idea was to move them all to this new reserve when it was established.

Mr. HATFIELD: Was that not the intention of the board or the director of Indian Affairs, to have other reserves or the Tobique reserve moved down to Kingsclear?

Mr. MACKAY: No, as a matter of fact, we left that pretty well to the Indians themselves. There was not anything in the way of compulsion. We said to them: we will provide this accommodation for you. If you wish to move to Kingsclear we are in a position to provide you with school and medical services that perhaps are not available where you are now residing.

Mr. HATFIELD: I know you built very good houses at Kingsclear, but the Indians could secure more work at Oromocto than they could at Kingsclear.

Mr. MACKAY: I could quite understand the attitude of the Indians after their sojourn at Kingsclear.

Mr. APPLEWHAITE: Under subclause (2), is a survey necessary before such a certificate of possession could be issued?

Hon. Mr. HARRIS: In nearly every case it is. In the older settlements it may be possible to make some legal description which would be reasonably accurate but it is desirable to have a survey.

Mr. SIMMONS: Are these titles registered in the Lands and Titles office?

Hon. Mr. HARRIS: No, if you will look at clause 21, that covers the registry office and we will discuss that there.

Mr. NOSEWORTHY: What is the usual size of these allotments?

Hon. Mr. HARRIS: They vary from an acre up to several hundred acres, I suppose. It depends on the reserve, on the number of people on it, the action the council wants to take, the man's capability to deal with the land he is applying for.

Mr. NOSEWORTHY: Are there still reserves on which there are considerable tracts of land not yet allotted?

Hon. Mr. HARRIS: Oh, yes.

Mr. NOSEWORTHY: Would that apply to all the reserves?

Hon. Mr. HARRIS: No, there are some reserves that are completely allotted but they are the exceptions.

Mr. CHARLTON: Just what right does the location ticket or the new certificate, called the certificate of possession, give the Indian holder?

Mr. MacKAY: The location ticket really is Indian evidence of ownership, it is almost equivalent to title. Once the land is allotted and the allotment approved by the minister, this location ticket is issued in the same manner as a title to land would be. The Indian owner has a copy of it, the copy of the location ticket is in the agency office, and one is held here in the branch.

Mr. CHARLTON: Could the minister give me any reason why an Indian holding a location ticket would not have permission to sell his farm to another Indian if he so desired?

Hon. Mr. HARRIS: My first impression is if he could not sell the farm to another Indian I am surprised, because that is one of the purposes of the certificate of possession; but if there is a particular case you have in mind we would look into it and see if there is a reason.

Mr. CHARLTON: What reason could there be?

Hon. Mr. HARRIS: I cannot imagine any unless he did not have a proper allotment of the piece of land he was trying to sell to that other Indian. Of course, as the director points out he might have money owing on the land and so on.

Mr. CHARLTON: Yes, that is true.

Mr. HARKNESS: In connection with the objection on the part of some bands in Alberta to issuing of the certificates of possession, do I understand from what you said a few minutes ago that you only issue them if the band council first allots the piece of land to an Indian, that in a case of that kind where the band does not want these certificates of possession that procedure would not be followed in the case of that band?

Hon. Mr. HARRIS: Yes, that is provided for in subsection (1).

Mr. CHARLTON: He is essentially in the hands of the majority of the band.

Hon. Mr. HARRIS: In the hands of the band council.

Mr. CHARLTON: Well, the majority elects the band council.

The CHAIRMAN: Subclause (2)?

Carried.

Subclause (3), location tickets issued under previous legislation.

Mr. CHARLTON: Is a complete record kept of all these location tickets so that in the case of a loss of a location ticket through fire, a duplicate could be issued?

Hon. Mr. HARRIS: Yes, I should add that under clause 21 we are now taking steps to improve our land registry system and make it even more foolproof and fireproof.

The CHAIRMAN: Subclause (3)?

Carried.

Subclause (4), temporary possession.

Mr. APPLEWHAITE: I would like to ask who is the representative that objected to subclause (4)?

Hon. Mr. HARRIS: Mr. Andrew Paull said that when the band council allots land there is no good purpose in the minister refusing the allotments and imposing conditions, that under those circumstances he thought the band council would act, and having in mind the desires of the band, that if it were their wish to allot the land to an Indian the minister should not have any say about it.

The CHAIRMAN: Subclause (4)?

Carried.

Subclause (5).

Mr. APPLEWHAITE: I have read this subsection several times and I am satisfied in my own mind that I am right, that it says that the minister shall as far as that first two-year period is concerned accept the decision of the band council. Is it the intention of the draftsmen of the Act to have that done? There is no discretion left whatever?

Hon. Mr. HARRIS: That is the intention. The minister's action is limited to two things, either accepting the original allotment or accepting it on a limited basis, because he cannot reject it.

Mr. APPLEWHAITE: That is what I wanted to know. Thank you.

The CHAIRMAN: Subclause (5)?

Carried.

Subclause (6)?

Carried.

Clause 21, register.

Hon. Mr. HARRIS: Well, I have already made remarks on this as to what we hope to do in the way of improving our land registry system and we would do it under this section and there is no comment on this from any Indian.

Carried.

The CHAIRMAN: Clause 22, improvements on lands subsequently included in a reserve.

Carried.

Clause 23, compensation for improvements:

23. An Indian who is lawfully removed from lands in a reserve upon which he has made permanent improvements may, if the Minister so directs, be paid compensation in respect thereof in an amount to be determined by the Minister, either from the person who goes into possession or from the funds of the band, at the discretion of the Minister.

Mr. CHARLTON: Could that clause be explained, Mr. Chairman?

Hon. Mr. HARRIS: This is one further step to that which we discussed yesterday with Colonel Harkness. This covers an Indian who is lawfully on the reserve in the first instance but for some reason occupies land which as it turns out, he was not lawfully entitled to occupy and has put improvements on it, so that—if I may pursue the argument a little—he has more right to compensation for the improvements than a white man who had no rights at all, but that is a matter of opinion. It happens, not often, but it does happen—even in non-Indian communities—where a person is allotted land and if there is not too much accuracy in the description of the land he may build his house on his neighbour's land, and this is the section that provides compensation under those conditions.

Mr. HARKNESS: The point is, though, that if the minister directs he be paid compensation, but otherwise the discretion is entirely in the hands of the minister. More or less it is a matter of compassion; he may direct that he be paid some compensation.

Hon. Mr. HARRIS: The alternative to this, you must understand, is that the Indian will appeal to the agent and through him to the minister for action on his behalf, and I cannot conceive of an occasion in which the minister would not take some action under these conditions, either granting compensation payable by the person who gets the benefit of the error or otherwise; but the alternative is to permit the Indian to sue in court against the trespasser and collect money in the normal way. In this particular instance where the error would depend entirely upon proof that we have in the land registry office, it would seem that the minister should initiate the proceedings on behalf of the person who is entitled to compensation or alternatively on behalf of the person who claims possession of the land. That is the intention of the section.

Mr. HARKNESS: What happens in the case of a man who is put off a particular piece of land, where he has his house, and so forth, that he has built on it. There are no band funds and nobody goes into possession of it. He is out of luck, is he?

Hon. Mr. HARRIS: Well, it is rather unlikely that the case would arise unless someone were claiming the land, but then, having claimed, it is likely he would have to pay a reasonable compensation to get it. Now, as everyone knows if (a) the Indian, (b) the band council, and (c) the band fund have no money the money would usually be paid from the Consolidated Revenue Fund.

Mr. HARKNESS: But there is no provision here for the consolidated fund paying.

Hon. Mr. HARRIS: No, this is a case of someone else obtaining a benefit out of an action which is taken with respect to the Indian.

Mr. HARKNESS: Yes, but you might very readily have the cases of persons, as stated here, lawfully moved; that is, they were men who were considered Indians and now it was decided they are not Indians.

Hon. Mr. HARRIS: No, this has nothing to do with that. This is the case of an Indian who is a member of a band, and who has made a mistake and has erected his buildings on the wrong land. This has nothing to do with yesterday's case, and since a mistake might have been made by the band council that is why we thought that compensation for the error might be paid from the band fund.

Mr. HARKNESS: I do not see anything there that applies to people such as I have mentioned who would be affected by this particular section.

Hon. Mr. HARRIS: This covers an Indian who has been lawfully removed from land on a reserve on which he made permanent improvements, or the conditions we considered yesterday were different.

Mr. HARKNESS: We had some discussion yesterday over the word "Indian".

Hon. Mr. HARRIS: Yes, but you will have to agree that this is an Indian who is still entitled to be an Indian and to stay on that particular reserve.

Mr. BLACKMORE: Of course, the Indian would direct his case to the other Indian?

Hon. Mr. HARRIS: The claim would come from the Indian whose land received the improvements. He would write in and say: "John Smith has his barn on my farm and we would like to have you look into it".

Mr. BLACKMORE: It is pretty well known among the Indians what would be the way of procedure.

Hon. Mr. HARRIS: Yes.

The CHAIRMAN: Clause 23?

Carried.

Clause 24.

24. An Indian who is lawfully in possession of lands in a reserve may transfer to the band or to another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister.

Mr. APPLEWHAITE: Clause 24 is something of a re-write of clause 23 of the old Act in which there was a definite statement that these lands were not subject to legal seizure. Why the change?

Hon. Mr. HARRIS: We have it later on in another section. This is an assertion of the right in answer to Mr. Charlton's question, that an Indian, having been granted legal possession of land, may in fact dispose of it.

The CHAIRMAN: Section 24?

Hon. Mr. HARRIS: The reason for this provision is that the minister may restrict the right of sale. But once again since the minister is responsible for land registration he must see to it that the transfer is carried out in proper form.

The CHAIRMAN: Section 24?

Carried.

Section 25, Transfer where Indian ceases to reside on reserve.

25. (1) An Indian who ceases to be entitled to reside on a reserve may, within six months or such further period as the Minister may direct, transfer to the band or another member of the band the right to possession of any lands in the reserve of which he was lawfully in possession.

(2) Where an Indian does not dispose of his right of possession in accordance with subsection one, the right to possession of the land reverts to the band, subject to the payment to the Indian who was lawfully in possession of the land, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Subsection (1)?

Mr. WELBOURN: Can an Indian transfer to a white man or to a non-Indian the right to occupy his land?

Hon. Mr. HARRIS: He may lease it under certain conditions which are dealt with by a later section; but he cannot sell it.

We have a representation on section 25 from the Native Brotherhood of British Columbia. They suggest that this section be deleted and the following substituted in order that individual membership in a band may be protected:

(1) An Indian who ceases to reside on a reserve may at his option transfer to the band or to any member of the band the right to possession of any lands in the reserve of which he was lawfully in possession.

(2) Where an Indian during his lifetime does not dispose of his right of possession in accordance with subsection (1), the right to possession of the land shall revert to his heirs, if they are members of the band, or if there are no such heirs, then the right of possession shall revert to the band, subject to the payment to the heirs of the deceased Indian from the funds of the band, of such compensation for permanent improvements as the minister may determine.

The CHAIRMAN: Subsection (1).

Mr. APPLEWHAITE: I wonder if the minister would express his opinion on that subsection, particularly on that provision which provides for payment to the heirs who presumably have been enfranchised, and so forth.

Hon. Mr. HARRIS: I received this recommendation just as I came in and I have not had much time to look at it. It seems to me it is precisely what we have done. We agreed on subsection (1), I take it.

The CHAIRMAN: Subsection (1)?

Carried.

Now subsection (2)?

Hon. Mr. HARRIS: The only thing I see here is that it provides for transfer, and that the lands can revert to his heirs; and under our section he can transfer to his heirs if he wants to.

Mr. NOSEWORTHY: What section provides that?

Hon. Mr. HARRIS: He can dispose of it to his heirs under subsection (1) by sale.

Mr. APPLEWHAITE: But if he dies intestate, it reverts to the band, does it not?

Hon. Mr. HARRIS: No, no. We are coming to that later on.

Mr. APPLEWHAITE: If he does not dispose of it, it goes to his heirs?

Hon. Mr. HARRIS: You are thinking of it at his death?

Mr. APPLEWHAITE: Yes.

Hon. Mr. HARRIS: It is related to his death. That is provided for later on, in the intestacy section.

Mr. APPLEWHAITE: Would you bring that up again?

Hon. Mr. HARRIS: Yes, I will.

Mr. NOSEWORTHY: In this particular section where the phrase occurs "as the minister may determine", I suppose in actual practice it would be the Indian agent who would determine it?

Hon. Mr. HARRIS: I wish it were so. The present practice under the Indian Act is much the same as we have provided for here in subsection (3). And by that provision the director is responsible for the action of the department. I have no doubt whatever that he reads all the documents before the minister's authority is exercised, and sometimes the minister reads them too.

Mr. NOSEWORTHY: This compensation could be agreed upon by the Indian and the agent.

Mr. MACKEY: Yes, and if it is not agreed upon, we call in a third or fourth party, frequently a real estate agent who is in the vicinity and who can value the property. Sometimes we call in a provincial government agent or one of his employees, or someone who is in a position to give an independent valuation. That information is then submitted through the regional supervisor in the province.

Mr. NOSEWORTHY: What happens in the case of those reserves which are particularly remote—the ones you referred to yesterday—where it would be impossible to get independent people without bringing them for long distances?

Mr. MACKEY: The regional supervisor with the Indian agent endeavours to secure an agreement with the Indians. And if he cannot reach an agreement, then the whole matter is referred to the department and we direct the regional supervisor to do what he can to secure an outside valuation.

Mr. BRYCE: The agent would not by-pass the supervisor in the province, would he?

Mr. MACKEY: We have had cases where they have by-passed them.

Mr. BRYCE: Is not that practice frowned upon in the department?

Mr. MACKEY: Yes, it is.

Carried.

The CHAIRMAN: Section 26?

26. Whenever a Certificate of Possession or Occupation was, in the opinion of the Minister, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer, or wrong description of any material fact therein, the Minister may cancel the Certificate and issue a corrected Certificate in lieu thereof.

Mr. CHARLTON: Concerning section 26, if an Indian did not specifically dispose of his land, or if he should die intestate, would that land automatically revert to the band?

Hon. Mr. HARRIS: No. Would you mind leaving that until we come to the estate section? This has to do with living Indians who for some reason or other cease to be entitled to live on a reserve; for example, an Indian woman marries and goes to live with another band; she has to move to the other band with her husband; or an Indian transfers to another band. That is what section 25 is intended to cover.

Section 26, Correction of certificates.

Hon. Mr. HARRIS: There were three objections and all were on the same basis, so the wording was changed.

Carried.

The CHAIRMAN: Section 27, Cancellation of certificates.

Carried.

Section 28, Grants, etc., of reserve lands void.

28. (1) Subject to subsection two, a deed, lease, contract, instrument, document or agreement of any kind whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

(2) The Minister may by permit in writing authorize any person for a period not exceeding one year to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

Mr. HATFIELD: Has the minister any information with respect to the problem which has arisen between the New Brunswick Hydro Commission and the Tobique band, about the building of a dam?

Hon. Mr. HARRIS: I should think there would be. I should think they would not be permitted to enter upon the reserve without their application having first been cleared.

Mr. HATFIELD: As far as I can learn, the Chief has been called down to Fredericton to talk the matter over. They are doing work on the reserve, yet there have been no damages assessed.

Mr. MacKAY: Is the dam being built?

Mr. HATFIELD: Yes. One end of it is on the reserve and the other end is on private property. The owners of the private property have received very large damages, but the Indian reserve band has received no remuneration, unless something has been carried on in your department. The Indian Chief would like to know what is going on on that reserve. They are going ahead with work on it as if damages had been assessed. I think they should have some arrangement before they allow the Hydro Commission to proceed any further. I think there should be some arrangement made about damages.

Hon. Mr. HARRIS: We shall look into it and let you know.

The CHAIRMAN: Could this matter not be discussed under the estimates? Section 28, subsection (1)?

Carried.

Hon. Mr. HARRIS: There were a number of objections relative to section 28 from the Blackfoot band council, Alberta, who said that permission should not be granted without the consent of the band council. The Sarcee Indian band, Alberta, went further and they said that the consent of a majority of electors of the band should be first obtained. The Indian Association of Alberta "rejected it unanimsously as a violation of existing treaties." And the Queen Victoria Treaty Protective Association suggested deleting it entirely.

At the conference there was no objection taken to the section because those who had objected to it in the first instance after discussion thought that it would be all right. They felt that the purpose of it was that protection would be granted for the kind of thing which Mr. Hatfield mentioned, and that it would be in the interests of the Indians. So they agreed to subsection (2) giving the minister permission to grant permits for a year at a time for this type of thing, thereby earning revenue for the band council.

Mr. HATFIELD: Would the damage money go into the possession of the band fund?

Hon. Mr. HARRIS: The money would go to the band fund.

Mr. CHARLTON: What about the individual land holder in that case?

Hon. Mr. HARRIS: It says that if the individual land owner is affected, he would come under the previous section, concerning expropriation of land.

Mr. CHARLTON: Mr. Hatfield has asked about a band being reimbursed for any damage.

Hon. Mr. HARRIS: That would apply to common lands. But there could conceivably be damage to the band itself.

Mr. HATFIELD: Who has the right to sell or lease land on the reserve?

Hon. Mr. HARRIS: There is a later section about that. When an individual Indian has an allotment of land, he may lease it under some conditions with the consent of the minister, and under other conditions with the consent of the band council.

Mr. HATFIELD: What is that again, please?

Hon. Mr. HARRIS: If an Indian has land allotted to him, he can sell it, under some conditions with the consent of the band council, and under other conditions with the consent of the minister.

Mr. HATFIELD: Well, what about land which is held by the reserve?

Hon. Mr. HARRIS: That comes under section 56.

Mr. BLACKMORE: Why does subsection (2) of section 8 not specify that the consent of the band is required?

Hon. Mr. HARRIS: The council of many Indian bands cannot be found for several months of the year. For example, in some cases in your own province they go down to the United States to work during certain seasons; and in other parts they go fishing for quite extended periods of time. Now, if there should be a request for action, at that time it would obviously be in the interest of the band for the minister to be able to give the permission, and that permission could not be renewed. The purpose is that the band council, when it is available, may consider whether or not permission should be renewed for another year.

Mr. BLACKMORE: Would there be any chance for the minister, at the end of the year, to issue another permit for another year and to go on that way almost in perpetuity without obtaining the consent of the band?

Hon. Mr. HARRIS: There is no provision for renewal under subsection (2).

Mr. BLACKMORE: It is just for one year?

Mr. APPLEWHAITE: That section to some extent is a repetition of the old section 34 in the original Act. In the old section 34 you included after the word "reside" "or hunt". Why has it been dropped?

Hon. Mr. HARRIS: There was a protest from Indians who felt that the one thing which perhaps most people wanted to do on a reserve was to hunt temporarily. So it was felt that we should meet their wishes.

Mr. APPLEWHAITE: You are satisfied then in not including the word "hunt" in the section. The right to give that authority no longer exists.

Hon. Mr. HARRIS: The band councils, of course, intervened and ask us to grant a permit, because they make a revenue from this activity.

The CHAIRMAN: Shall subsection 1 carry?

Mr. HARKNESS: The purpose of this is essentially, as I understand it, so that you can permit public works to be constructed—or something along that line.

Hon. Mr. HARRIS: That is right.

Mr. HARKNESS: Under the section, as I see it, you would be perfectly in order to give a neighbouring rancher the right to run his cattle on the reserve and use it in that way—and that is a matter that is a fairly hot question particularly on the Sareee reserve. There are a lot of people who are constantly attempting to run cattle on the reserve.

Hon. Mr. HARRIS: I doubt if leasing land for cattle grazing is within the interpretation of the expression "exercising any right". That is a user of land. The rights here are something less than that—rights of way, occupation by construction gangs for roads, hydro lines, and so on; things that are of a temporary nature.

Mr. HARKNESS: But this use of the words "use a reserve" would enable anyone of whom you approved to run cattle on the reserve?

Hon. Mr. HARRIS: I can assure you I am not likely to do that.

Mr. HARKNESS: I am not saying you are, but I am just wondering if something perhaps not be put in there—"for the purpose of constructing public works—"

Hon. Mr. HARRIS: We thought of that and we discussed it at the conference. We found it difficult to define public works. In addition to public works there are a number of other things; there is the question of right of way for logging camps through a reserve. The Indians do not object to that particularly but it would be only for the period when they were taking logs out under that direct right. There are a number of easements of that kind and we felt that we could not describe it so accurately that we would be right and not omit anything we should have included. The grazing of cattle comes under agricultural pursuits later on, but I should think that reading the sections together you would conclude that we have provided for the lease of land there and we have not provided for it in this section.

Mr. BLACKMORE: Suppose the minister granted permission for the construction of a reservoir that would affect an Indian reservation? Suppose he granted it for one year, he would not be permitted to grant it for more than one year?

Hon. Mr. HARRIS: The time limit is provided so that the minister will find the band council and get their consent to that activity in the meantime.

Mr. BLACKMORE: In other words he would not feel free at all, or feel entitled to grant the permit for the construction of a reservoir on a reservation because he would still have to get the consent of a band.

Hon. Mr. HARRIS: If it is a long term project of that kind, the chances are the minister would not grant the permit. He would go to quite extreme measures to get in touch with the council first.

Mr. BLACKMORE: I am a little bit worried about the actual wording of the subsection. Perhaps it is impossible to define it more accurately, but it seems to me there is a good deal of leeway that might result in abuses in some way or other.

Hon. Mr. HARRIS: It is more restricted here than in the old Act.

Mr. HATFIELD: I do not see anything in this Act whereby the minister cannot do what he likes. He need not consult the band. I do not see anything under this where he need consult the band at all.

Hon. Mr. HARRIS: At the end of the year whoever has been granted permission becomes a trespasser on the reserve, because he no longer has permission to be there. At that point the band would come into it.

Mr. HATFIELD: But it does not say in section 28 that the minister has to consult the band.

Hon. Mr. HARRIS: No, but if the minister grants permission to Mr. Hatfield to run his trucks over a reserve in New Brunswick, in order to take out a potato crop, he would only grant that permit for a particular season, knowing that Mr. Hatfield would be wanting to do that again perhaps the following season. The minister must then get consent of the band.

Mr. HATFIELD: Where does it say that you have to get the consent of the band? What section covers that? It is not covered in this section.

Hon. Mr. HARRIS: If you just go down to section 30 you will see where a person who trespasses is guilty of an offence. You become a trespasser if you have not got a permit from the minister.

Mr. NOSEWORTHY: What is to prevent the minister giving a new permit?

Mr. HATFIELD: Where does it say the minister has to consult the band?

Hon. Mr. HARRIS: For what purpose?

Mr. HATFIELD: For any purpose.

The CHAIRMAN: We are talking about subsection (2) of section 28.

Mr. HATFIELD: He can still give a permit.

Hon. Mr. HARRIS: As I say, if you will wait, sections 55 and 56 have to do with this.

The CHAIRMAN: Mr. Noseworthy?

Mr. NOSEWORTHY: My question is this: the minister is at liberty to grant a new certificate at the end of the first year, is he not, without consulting the band?

Hon. Mr. HARRIS: It is entirely unlikely that would be done. It is conceivable, but the purpose here is a temporary decision to grant uses or privileges on the reserve which cannot normally be granted without the consent of the Indians.

Mr. BLACKMORE: Mr. Chairman, I wonder if the object of the minister would be just as easily obtainable if some words were put into that subsection after the word "may".

The CHAIRMAN: Which subsection?

Mr. BLACKMORE: Subsection 2 of section 28. "The minister may 'with the subsequent consent of the band council' by permit in writing authorize any persons—"

The CHAIRMAN: It cannot be subject to consent, you are giving a permit.

Hon. Mr. HARRIS: We have been given the responsibility for granting the permit when we grant it, and it is not intended that the band council should at a later time have the right to approve or disapprove of the action of the minister, because it has been done for a temporary purpose.

The reason for limiting it was at the request of the Indians—that there should be only a very limited emergency power in the minister, and that the authority would extend under those circumstances only for one year.

As I say, and as Mr. Hatfield has pointed out, there are provisions for the use of land with the consent of the band council. This is to cover the case where the band council is not available at that particular time.

Mr. BLACKMORE: As I read the subsection it looks to me as though the minister, if he so desired or so chose, could grant permission for one year, and then at the end of that year, strictly in accordance with the wording of the subsection, he could grant permission for another year; because there is no statement in subsection (2) to the effect that at the end of the first year he would have to obtain permission before granting a permit for a further year.

Hon. Mr. HARRIS: Well, that may be true if you read it that way, but the power which you would exercise at that time would be no more arbitrary than the decision to grant the permit in the first place.

Mr. BLACKMORE: If you chose to exercise that arbitrary power the first, second, third and fourth year, there is nothing in the Act to prevent the minister from so doing, so far as I can see.

Hon. Mr. HARRIS: If you would consider it desirable and in the interests of the Indian to insert a clause to the effect that any person who has been granted a permit for one year shall not obtain a permit in future—

Mr. BLACKMORE: Without permission of the band. There might be permission by the minister for the first year and then have it definitely stated that in order to obtain the permit another year there would have to be consent of the band.

Hon. Mr. HARRIS: We can consider that and perhaps leave the subsection stand now.

Mr. APPLEWHAITE: Is it not a fact that if permission were granted for a year and then if it were granted at the end of that year for another year, the second granting would be in contravention of the Act, because the Act says: "not exceeding one year".

The CHAIRMAN: This is further permission.

Mr. CHARLTON: Each permit would be just for one year.

Mr. APPLEWHAITE: I do not think so.

Mr. HATFIELD: I think there should be something in there to protect the rights of the band. I know of a reserve in my constituency where years ago, not under this director, but years ago the political friends of both governments went in and cut lumber on that reserve until they cleaned the lumber off it. There should be some protection for the Indian band or the Indian reserve. The government let their political friends go in and cut lumber on the reserve.

Hon. Mr. HARRIS: That has not been done for a good many years.

The CHAIRMAN: We stopped that.

Mr. HATFIELD: It has not been done since I have been in parliament but I have known it to happen. When I first came up here in 1940 there was a man in there lumbering and why he was allowed I do not know. The Indian chief came to me about it and I found out that the man was in there and had been for years before that. Both governments, or both parties had allowed that to be done. They had allowed their friends to go in there and they sold off the reserve until there was practically nothing left on the reserve. There is not enough wood for the Indians on the reserve. It has been all trimmed off by friends of different governments. I do not say that is true of the present government, but it was years ago.

Mr. HARKNESS: Well, considering the purpose for which this clause is in here—which is essentially for road easements, public works and so forth—I would think your suggestion of a little while ago might be a wise one; that the thing might stand and have further consideration given to how it might be amended. Further consideration might be given to what you have thought of by putting in words along the line of “for the purpose of public works, road easements”. The purpose of the subclause would be quite definite and the Indians or any particular band would be protected from things such as Mr. Hatfield has been talking about, or from people's cattle being turned in to graze on the reserve whether the Indians wanted it or not.

Hon. Mr. HARRIS: We have never had complaints along that line, at least in my time. As I said before we were conscious of all these arguments—we made them to each other—and we have tried to devise a wording which would be all-inclusive to give the minister powers to do these things which he should do for the benefit of the Indian band—because that is what he is supposed to be doing. However, we found that it was difficult, if not impossible to draft this all-inclusive wording.

Mr. BLACKMORE: I do think it would be better to let it stand and let the minister give a little more thought to making the provision more specific.

Mr. HARKNESS: I have no objection whatever to the minister having the power taken under this particular clause to give road easements or something along that line, but I do think, as has been indicated by the conversation this afternoon, that there should be some protection as far as other uses to which Indian lands might be put or given out under this clause.

Hon. Mr. HARRIS: It is a vast improvement over the old Act. We struck out the word “hunting”, and we have limited the powers of the minister to one year, whereas under the old Act it was unlimited.

Mr. NOSEWORTHY: The purpose for which such permit is granted is stated or specified in the permit?

Hon. Mr. HARRIS: Oh, yes.

Mr. NOSEWORTHY: The Act, as stated here, gives permission to use the reserve or exercise rights on the reserve, but I presume that would be specified in the permit?

Hon. Mr. HARRIS: Yes—“that the John Smith Lumber Company may have a logging road for this season—”

Mr. GIBSON: I know of one case near Port Alberni in which you took possession for the purpose of giving the Department of Transport permission to put up a fog alarm. The Indians would not give it themselves and the minister had to step in and do it in the public interest.

The CHAIRMAN: Shall section 28 (1) carry?

Carried.

Section 28 (2) will stand.

Agreed.

Section 29.

29. Reserve lands are not subject to seizure under legal process.

Mr. APPLEWHAITE: I wonder if the minister would just confirm or dispel my fears in this connection. Reading the old Act over very sloppily I came to the conclusion that reserve lands were lands in the possession of a band. Now I gather it also applies to lands in possession of an Indian under a certificate of possession, or something of that sort. It is not very clear, as there is no definition of the expression “reserve lands” in the definition section. I may be

making a mountain out of a molehill but you are going to have terrible complications if you find that we put on the statute books an Act which makes Indian private holdings on the reserve subject to legal process. By taking it out of the section of the old Act, and by putting it in by itself in the new form, you may possibly be inviting some lawyer to make a case of it. Now is the time to consider it.

Mr. HATFIELD: We have no good lawyers now.

The CHAIRMAN: Order, order.

Hon. Mr. HARRIS: I grant you there is no specific definition of the words "reserve lands" but there is a definition of the word "reserve".

Mr. APPLEWHAITE: Yes, there is.

Hon. Mr. HARRIS: You would add to the definitions. "Reserve" means "a tract of land, the legal title to which is vested in His Majesty, that has been set apart by His Majesty for the use and benefit of a band."

"Reserve land" would be land situate on that reserve.

Mr. APPLEWHAITE: Yes, something along that line. I am not working for any particular wording but at the end of section 29 there should be something to the effect— "whether in the control of the band or the individual Indian."

Hon. Mr. HARRIS: We had better let that section stand.

Mr. NOSEWORTHY: Does section 29 replace section 23 under the old Act or are all of the provisions of 23 and 109 wiped out?

Hon. Mr. HARRIS: They will be; the old Act will be repealed when this Act is passed.

The CHAIRMAN: Shall section 29 carry?

Carried.

Section 30—Trespass on reserves—penalty for trespass.

30. A person who trespasses on a reserve is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding one month or to both fine and imprisonment.

Mr. MURRAY: Do you consider that penalty is adequate? Most of the trouble on reserves comes from persons who do not belong. To my mind you should make that penalty as stiff as possible, and make it clear that they are not wanted. I do not think that a fine of \$50 is anywhere nearly large enough.

Mr. GIBSON: No, it is only the profit on three bottles of whiskey.

Mr. MURRAY: I think a prison term should be included there. I think it would do a good deal.

Mr. HATFIELD: What rights have a provincial government to issue fishing licences and permits for people to fish streams running through these reserves?

Hon. Mr. HARRIS: A provincial government granting rights on streams?

Mr. HATFIELD: Yes, the streams in the reserves are reserved for the Indians.

Hon. Mr. HARRIS: When did that happen?

Mr. HATFIELD: I am told that it has happened in lots of places.

Hon. Mr. HARRIS: We have the same problem in respect to game and fishing licences throughout the dominion.

Mr. GIBSON: That is a very small fine.

Mr. MURRAY: Yes, and most of it is done by people running in and making money, going in and marauding women, selling liquor to the Indians, and interfering where they have no right to interfere. I think we should do all we can to keep outside people away from these reserves.

Mr. GIBSON: Yes, we should have a stiffer penalty—a stiffer penalty and everything else.

Hon. Mr. HARRIS: I think the matter of these penalties was considered by that committee and their recommendation was that they should be increased. I think Justice considered that this was in line with the normal trespass that one would face on non Indian property. But, if you feel it should be increased—

Mr. MURRAY: I have an example in our district on the Indian mine road. There are certain values in the gravel there. Why should the white men go in and interfere? The white man has no right to do that.

Mr. BLACK: The same is true with regard to Kimberley.

Hon. Mr. HARRIS: That is a case of mere trespassing.

Mr. GIBSON: With the present inflation it is pretty attractive.

Hon. Mr. HARRIS: Shall we carry section 30 then, subject to further considering this?

Mr. GIBSON: Yes.

The CHAIRMAN: Carried. Section 31, subsection 1—information by attorney general—subsection 1.

Hon. Mr. HARRIS: The president of the North American Brotherhood objected to the section saying that the section in the present Act was better and he wanted that retained.

Mr. HATFIELD: What was his objection?

Hon. Mr. HARRIS: That was in the statement, the original statement to which I referred some time ago.

Mr. BLACKMORE: What was the objection? I was just wondering if the minister would repeat what he said, I want to see it on the record.

Hon. Mr. HARRIS: The president of the North American Indian Brotherhood objected to this section on the ground that we should leave in the old section, the section in the other Act. He stated his reasons for that in a letter, and then when he came to the conference he did not raise the point at all, and this section was agreed to by the council.

The CHAIRMAN: Shall subsection 1 of 31 carry?

Carried.

Subsection 2—information deemed action or suit by Crown.

Carried.

Subsection 3—existing remedies preserved.

Mr. NOSEWORTHY: What are some of the existing remedies referred to in that section?

Hon. Mr. HARRIS: Well, that is just reserving in, leaving in, the rights of the Indian; to protect him as from the date of the passing of this Act which replaces the old Act. The Indian has the same rights with respect to the Crown as are enjoyed by you, or myself, or any other person; for instance, he has the right to sue for damages and so on.

The CHAIRMAN: Carried. Section 32, the sale or barter of produce; subsection 1.

32. (1) A transaction of any kind whereby a band or a member thereof purports to sell, barter, exchange, give or otherwise dispose of cattle or other animals, grain or hay, whether wild or cultivated, or root crops or plants or their products from a reserve in Manitoba, Saskatchewan, Alberta, the Northwest Territories or the Yukon Territory, to a person other than a member of that band, is void unless the superintendent approves the transaction in writing.

(2) The Minister may at any time by order exempt a band and the members thereof or any member thereof from the operation of this section, and may revoke any such order.

Mr. HATFIELD: Why is this applied to the reserves in Manitoba, Saskatchewan and Alberta, the Northwest territories and the Yukon Territory?

Hon. Mr. HARRIS: That only applies to those because that is all it ever has applied to. In the Indian Act as of today there has been this prohibition against Indians in these territories disposing of their crop or produce without a permit. The permit system has never applied to Indians on other reserves. And the improvement we have made in that section is in the addition of subsection 2, whereby we give the minister power to exempt any band or member from the operation of that section. In other words, the minister may now, if this is passed, grant an exemption to a band in these provinces so the members may sell their grain, cattle and produce and the like, without having to get a permit so to do.

Mr. MURRAY: In British Columbia we have a number of co-operatives and many Indians are members of certain co-operatives, for instance, in selling fish.

Hon. Mr. HARRIS: This does not apply to them.

Mr. MURRAY: I think they should be encouraged to join co-operatives, quite apart from the Indian council.

Hon. Mr. HARRIS: Yes, this is just to enable the individual Indian to sell his own produce.

Mr. SIMMONS: I do not know why we should have this in there with respect to some of that area because cattle and grain are not raised there.

Mr. HATFIELD: That applies to the Indians in the West, why does it not apply to the reserves in eastern Canada?

Hon. Mr. HARRIS: This was a restriction placed upon the Indians in the Northwest a very long time ago because in some cases it was found that proper prudence was not being practised by the Indians in their dealings, with the result that this permit system was introduced to make sure that their money was saved to some extent.

Mr. HATFIELD: I think it will be a very great necessity in eastern Canada.

Hon. Mr. HARRIS: It is not a question of necessity, it is more a question of improvidence, perhaps.

Mr. HATFIELD: Well then, what is to stop four or five Indians going to a pulp buyer and making a deal with him and going on to a large reserve and cutting 10 or 15 cords of pulp wood? They could go in and nobody would know anything about it and make an arrangement with the pulp buyer for instance to sell him this pulp wood. For instance, a band of Indians, let us say four or five Indians, might get together, and there would be nothing to prevent them from cutting pulp and bringing it out and piling it on the main road where the pulp buyer could arrange to pick it up. What is to stop that sort of thing?

Hon. Mr. HARRIS: You are speaking of pulp buyers going to Indians on the reserve and buying pulp from them, but cut from their own lots?

Mr. HATFIELD: No, no.

Hon. Mr. HARRIS: There is no objection, of course to Indians cutting pulp from their own land, so I do not see how this would apply to New Brunswick.

Mr. HARKNESS: I would suggest that it would be a good idea to encourage the Indians to join the wheat pools or the co-operative associations.

Hon. Mr. HARRIS: Well, they are doing that, but this was originally intended to afford some control over the Indian taking his grain and selling it without regard to its value, and more particularly without regard to his own obligations.

Mr. NOSEWORTHY: And so they would not be chiselled on price.

Hon. Mr. HARRIS: Yes, so they would not be chiselled on the price; and, also, perhaps not paying their legitimate debts or obligations.

The CHAIRMAN: I think it applies to a large extent to pure-bred cattle.

Mr. HATFIELD: Why does it not apply in New Brunswick?

The CHAIRMAN: Just a moment, if you don't mind. I think that applies to a large extent to pure-bred cattle which have been purchased probably by the Indians as a band and this asset is dissipated by individual Indians selling the cattle entrusted to them.

Mr. HATFIELD: I do not see why it only applies to certain provinces.

Hon. Mr. HARRIS: It would be unfortunate, I think, if you tried to extend it; because this clause, and the old clause whereby a permit was required by the Indian dealer, has been the subject of a great deal of consideration during the last twelve months, probably more so than any other section in the bill. I think it was stated in the House of Commons as well that it is the kind of legislation of which it might be said that an arbitrary government was trying to impose it on the Indians.

Mr. BLACKMORE: I think there should be some provision in the Act against abuses. It has been reported to me that there are cases where Indian agents have told the Indians that they would have to sell their commodities to them at the prices they fixed and which were below what they could get on the open market.

Hon. Mr. HARRIS: Well, Mr. Blackmore, we have a section in the Act which makes it an offence for any member of the department to trade with an Indian.

Mr. BLACKMORE: Might I just explain, Mr. Harris. This fodder is purchased by the agent for feeding the Indian cattle on the reserve, and it has come to my notice that there are cases where the Indian is forced to sell his hay, for instance, at a price which is much below that which he could get for it if he sold it elsewhere; and, as I said this hay was being brought to feed Indian cattle on the reserve.

Hon. Mr. HARRIS: Mr. Blackmore, I think we might discuss that on the related section which comes later on in the Act. I realize, as you say, that this man is not trying to make a personal profit out of it. But I think it would be more appropriate to discuss it on the clause which comes later, and to which I have just referred. It is well over to the end.

Mr. GIBSON: What position would the Indian be in if he was one of four or five Indians who went in and cut pulp wood off the timber on the reserve—to turn back to Mr. Hatfield's example for a moment—would he not be dissipating the assets of the band by doing that? Where does the general band get any revenue from that?

Hon. Mr. HARRIS: You are talking about logs cut by the Indians on their own land. I think an Indian would have a right to do that.

Mr. GIBSON: No, that is not what I mean.

Hon. Mr. HARRIS: The Indian would have a right to cut pulp wood, or timber off his own land.

Mr. GIBSON: Yes, I appreciate that; but what about the cases where they cut it off the land which belongs to the band?

Hon. Mr. HARRIS: Oh, you mean if they cut it off land that belongs to the band?

Mr. GIBSON: Yes, that is what I mean.

Hon. Mr. HARRIS: They would have a right to take timber out.

Mr. GIBSON: The band council has the right to assess stumpage charges against the personal operator?

Mr. MACKEY: Permits are issued setting out conditions under which the Indians are permitted—

Mr. GIBSON: —to log their own timber?

Mr. HATFIELD: What can be done in the case of a person outside the reserve who is contracting with Indians for the supply of baskets, the price at which they are contracted for being below the market price for these baskets, where the Indians take some money during the summer and for that money they agree to sell the baskets at a price away below the market price? Is there anything to guard against that?

Mr. MACKEY: Yes, Mr. Hatfield, a transaction of that kind is illegal. The lease of Indian lands must be approved by the minister and usually an application to lease the land comes from an Indian or a group of Indians to the local agent and it is referred to the band council and the council either approves or disapproves of the lease to this party. If they approve then it is sent on to the department and processed in the usual channels and eventually approved by the minister.

Mr. HATFIELD: This is not land I am talking about, it is baskets manufactured on the reserves.

Mr. MACKEY: Oh, I understood you to say, Mr. Hatfield, that people went on the reserves and used the land for pasture. I see, it is in connection with the selling of baskets made by the Indians. Well, of course, an Indian is a free agent the same as the rest of us; he can make any deal he likes with respect to his products. We have no control over that. We would like to encourage him to take advice in regard to the sale of his products from the agent.

Mr. HATFIELD: In that case should not the agent interfere and say these baskets are worth more money? The Indians sell the baskets for the reason that they want the money then, and the baskets are made during the summer but are not delivered until the fall.

Mr. MURRAY: This section does not deal with baskets, it is dealing with potatoes, hay, grain, agricultural produce.

Hon. Mr. HARRIS: You would have to insert a statutory authority in the Act which is not here now so that the agent could interfere in the trading between an Indian and a non-Indian. That would be so contrary to the present trend if you want to pursue it—

Mr. HATFIELD: I think the agents should take some interest in what the Indians do on a reserve. They know they are selling baskets too cheap in order to get money to take them through the summer. Those baskets are not saleable in the summer months, they are saleable only in the fall months for picking potatoes.

Hon. Mr. HARRIS: Do you suggest that we take over the sale of the baskets for these people?

Mr. HATFIELD: Yes.

Mr. WOOD: Mr. Chairman, I have in mind some Indians who raise grain and alfalfa quite extensively. Has it been necessary up to now to have the approval of the superintendent for the sale of that alfalfa?

Mr. MACKEY: Yes.

Mr. WOOD: This is not changed then?

Mr. MACKEY: It will.

Mr. WOOD: Make it more difficult?

Mr. MACKEY: The minister, of course, will have the power to exempt an individual or a group of Indians from the operation of the section requiring a permit.

Hon. Mr. HARRIS: The Indian may not need a permit now.

Mr. WOOD: These fellows I have in mind are quite successful farmers and I would not like to see any obstacle put in their way.

Mr. MURRAY: I was going to say regarding these baskets, that in British Columbia they make baskets also, and very beautiful baskets, in fact, they are works of art. They are sold to American tourists and others and they are never sold cheaply. It just shows the variety of products manufactured by the Indians across the country.

Mr. HARKNESS: As the minister has said, this section is one that has caused a great deal of complaint on the part of Indians in western Canada. It was put into effect to begin with in the early days when the Indians had no sense of the value of money and for their own protection, to prevent them dealing off all their herds of cattle for a few bottles of whisky and a few beads. Now, this thing has continued right through from that time. In the meantime a large number of Indians are successful farmers and are able to handle their own affairs. The purpose of subclause (2) is so the minister may grant to these people who are able to handle their own affairs the right to do so, and it is a forward step and one that is all to the good.

The question I was going to ask about this is what policy is going to be followed now in connection with this matter? Is the grant of these permits to individuals or bands as a whole to handle their own affairs going to be quite widely practised, or how do you propose to handle the power which subclause (2) gives you?

Hon. Mr. HARRIS: It stands to reason we will have to be informed as to the capabilities of a band generally or an individual Indian and I have no doubt that the agent himself may be as well informed as anyone, or the person who normally deals with that Indian or band in the white neighbourhood near there; but it is the intention to grant the permits and to actively seek out persons to whom permits should be granted. We are not going to sit back and wait for people to complain that they have not been granted a permit. We will actively embark upon a policy of granting them.

Mr. HARKNESS: Well, then, your policy will really be to circularize the Indian agents, I presume, and ask them to recommend the people who, in their opinion, should have permits, and then permits will be issued to them? On the other hand, if a man has not received a permit as a result of that, is there any provision for him appealing or taking it up with the superintendent or yourself in order to get that permit?

Hon. Mr. HARRIS: There is no provision necessary for that; if he sits down and writes me we will read his letter and investigate his case.

Mr. HARKNESS: Will that information be sent out to the Indians?

Hon. Mr. HARRIS: I think this section is pretty well known on most of the reserves in western Canada but we will make it known everywhere.

Mr. BRYCE: What I want to get at is this: In this section, the minister may at any time give exemptions to one Indian or half a dozen Indians to sell their grain, but are they still under the supervision or jurisdiction of the agent whenever you give them that exemption, or are they free agents as Major MacKay said a few minutes ago?

Hon. Mr. HARRIS: They are free agents for the purpose of subclause (1), that is the sale or barter of produce, of cattle or other animals, grain or hay.

Mr. BRYCE: And they do not need to consult their Indian agents?

Hon. Mr. HARRIS: No.

Mr. SIMMONS: In line 3, the words "dispose of cattle or other animals"—would animals there mean fur-bearing animals too? The reason I want to know this is that the Indians in certain times of the year trap live animals and sell them to the various fur farms and I was just wondering if these would be included in the other animals and if so, would such a deal have to be approved by the superintendent?

Mr. MACKEY: I do not think that fur-bearing animals would be included in this at all; it is just to remove the restriction that exists at present with respect to production on farms.

Mr. APPLEWHAITE: You could say, wild or cultivated. Does that apply?

Mr. JUTRAS: It has not been the practice in the past to restrict the sale of fur-bearing animals. I do not think permits are needed.

The CHAIRMAN: Clause 32, (1)?

Carried.

Section 32, subsection (2)?

Carried.

Section 33—Offence.

33. Every person who enters into a transaction that is void under subsection one of section thirty-two is guilty of an offence.

Mr. HARKNESS: There is no penalty provided here, Mr. Chairman.

Hon. Mr. HARRIS: There is a general clause later on which provides for penalties where one is not specifically provided.

The CHAIRMAN: Carried.

Hon. Mr. HARRIS: Excuse me one moment. There was a discussion at the conference with respect to Section 32 which I think ought to be incorporated in the record. It will be found at the bottom of page 4, paragraph 23. It is merely an expression of opinion for and against it by certain Indians. There was one who felt that the permit system should be abolished. On the other hand, another felt that it should be retained as protection to the Indian.

Mr. SIMMONS: Would it be in order to delete the words "Northwest Territories and Yukon Territory" there?

Hon. Mr. HARRIS: We can look at that. I was under the impression it was a continuation exactly of the old Act as it was.

The CHAIRMAN: I should think you would want it included.

Mr. HARKNESS: Have you no hay up there?

The CHAIRMAN: Section 34, subsection (1)—Band to maintain roads, bridges, etc.

ROADS AND BRIDGES

34. (1) A band shall ensure that the roads, bridges, ditches and fences within the reserve occupied by that band are maintained in accordance with instructions issued from time to time by the superintendent.

(2) Where, in the opinion of the Minister, a band has not carried out the instructions of the superintendent given under subsection one, the Minister may cause the instructions to be carried out at the expense of the band or any member thereof and may recover the cost thereof from any amounts that are held by His Majesty and are payable to the band or such member.

Mr. MURRAY: That does not mean fencing in all these reserves, does it? Now that you are surveying them and putting a new value on them, will you not have to put fences around them?

Hon. Mr. HARRIS: The Fort Alexander Catholic Association of Pine Falls, Manitoba, thought this was a good section under which to request all-weather roads to be maintained by the government. The Indians of The Pas agreed to this section. The Band Council of the Abenakis of St. Francis, Pierreville, Quebec, was opposed to it. The Blackfoot Band Council in Alberta opposed the first section without the consent of council; and they objected to subsection (1) on the grounds that the consent of the band council should be required; and as to subsection (2), they rejected it entirely. The Oka Band Council thought that these provisions should be deleted because the roads in Oka are maintained by the municipality and operation of the provision would cause friction.

It does happen to be the case that municipalities do operate roads there, so we would not want to try to insist on the Indians operating them. So the objection does not apply.

Mr. HARKNESS: In connection with that, you mentioned the Blackfoot objection to clause (1) particularly. I can well understand that, because there is a road about 15 miles long which cuts right through their reserve. That road is used primarily by white people, and it does not seem reasonable that the reserve should have to maintain that road at their own expense. I do not know whether or not they do, but I would take it that if the Blackfoot Band Council objected to it, that possibly that is the situation.

There is a considerable number of other reserves in Alberta at least through which roads are cut, roads which are really for the convenience of white people. And it certainly is not a reasonable proposition that band funds should be called upon to maintain those roads.

Hon. Mr. HARRIS: Is this a provincial road?

Mr. HARKNESS: I do not know what kind of road it is. I have been over it two or three times, but I do not know who maintains it.

Hon. Mr. HARRIS: Wherever there is a road which is a municipal road and it is on a reserve, a special arrangement is made with the provincial government. This applies to reserve roads in normal use which are on Indian reserves.

Mr. HARKNESS: I do not know that Indians in Alberta have objected to this clause on the ground that they are being forced to maintain out of band funds roads which are primarily for the use of white people, and which make it more convenient for white people to pass through the reserve instead of going around it.

Hon. Mr. HARRIS: You cannot establish a road through a reserve without a surrender in the first instance by the band. I know that there have been many arguments about this. Every band that sends in a resolution along that line would have you believe that they did not use the road themselves at all and that it was only non-Indians used the road in going around the reserve.

Where a provincial highway goes through an Indian reserve, you first have to obtain a permit from the band. But this applies to a road in common use on the reserve.

It would be a strange situation, I should think, if the people in a community would not be responsible for the maintenance of their roads.

Mr. HARKNESS: Roads which are primarily for their own use, well and good. But what I am talking about is roads which run through the Blackfoot reserve. It may be that the provincial government maintains that road but I do not know. There is another one at Hobbema where the same situation prevails and I have heard the same sort of complaints about it.

Mr. BLACKMORE: Does not the department build roads sometimes for their own special use?

Hon. Mr. HARRIS: Yes, we build roads and we take care of the maintenance of them sometimes.

Mr. BLACKMORE: I think Mr. Harkness' objection applies with a great deal of force in Alberta. There is a first class highway running right across the reserve.

Hon. Mr. HARRIS: There is no change in the subclause.

Mr. HARKNESS: There have been complaints coming in for many years over this, or a similar provision in the old Act.

Mr. JUTRAS: Is it not a fact that in a case like that, where white people use a road through a reserve, that the Indians are in a position either to block them off, or to make a deal such as you and I or anybody else would make with the municipality concerned, so that they would pay for a share of the road?

Mr. APPLEWHAITE: They would be trespassers if the road was in a reserve and in the possession of the Indians.

Hon. Mr. HARRIS: They would be trespassers if the road had not been declared a public road, and to do that you would require to have a surrender in the first instance.

Mr. BLACKMORE: Then in that case this stipulation would not apply.

Hon. Mr. HARRIS: That is right. If it is a public road it has already been surrendered, and this would not apply.

Mr. NOSEWORTHY: Are not provincial highways, county roads and township roads running through Indian reserves maintained by the province, the county, or the township concerned?

Mr. WELBOURN: If it is declared to be a public road, then the Indians would not be liable for its maintenance. Is not that right?

Hon. Mr. HARRIS: There are instances where agreements have been made whereby some portion of the cost would be taken care of under certain circumstances.

Mr. BLACKMORE: I do not see any protection under the present wording in the case of a public road. It just says: where the road is within a reserve.

Mr. APPLEWHAITE: Well, if it is a public road, it cannot be within a reserve within the meaning of the Act. For example, if it is a public road, you can transport liquor over it. But if you transport liquor in a reserve, you will commit an offence. However, you are not committing any offence if you transport liquor over a provincial highway in most provinces. Therefore if it has been gazetted as a provincial road, then it ceases to be on a reserve.

Hon. Mr. HARRIS: That is true, because it has been surrendered by the band in the first instance.

The CHAIRMAN: Section 34.

Mr. HARKNESS: Apart from Mr. Applewhaite's argument, as the minister knows and as Major MacKay knows, this has been a matter of complaint for some years in Alberta; and whether it is legally a public road or whether it is not, the Indians have in many cases been obliged to use their band funds to maintain the roads which they, at least, consider were chiefly for the convenience and use of white people and not for themselves.

Hon. Mr. HARRIS: They are part of the community. You do not think of charging people coming into Calgary, for instance, for travelling on your roads. And it may well be, as Mr. Jutras suggests, that the white man has no right to go on the reserve and drive on the road. But on the other hand the remedy lies

in the hands of the Indians themselves who may declare the non-Indian to be a trespasser, or may accord him the usual privileges that we enjoy in every municipality.

Mr. HATFIELD: I know of a case where a municipality expropriated the land of an Indian reserve without the consent of the Director of Indian Affairs.

Hon. Mr. HARRIS: That would come under section 35. We can discuss it under that section.

The CHAIRMAN: Section 34, subsection (1).

Carried.

Mr. BLACKMORE: Could not something more specific be put in there to give protection to the Indians where the road is being used at least equally by Indians and white men?

Hon. Mr. HARRIS: Why should there be? No other group of people try to assess the cost, except perhaps through a gasoline tax, for the use of roads in any part of Canada.

Mr. BLACKMORE: I do not know if the minister and I are looking at the same thing.

Hon. Mr. HARRIS: If I should drive into Lethbridge, your people would not try to impose a tax on me for merely using your road.

Mr. BLACKMORE: If the road is a county, a municipal, or a provincial road, surely the Indians should not be called upon to contribute to keeping it up.

Mr. HARKNESS: Well, I think they have been so called upon in some cases.

Hon. Mr. HARRIS: We would be glad to look into any case that you might suggest to us.

Mr. WOOD: In my constituency we have a reserve with a highway running through the middle of it. The band gave the title of the land to the provincial government to build the road right through there. Now, that road will be used more by the Indians on the reserve than it will be used by the few settlers who live beyond the reserve. As far as I know the provincial government is building the road with a little assistance from the department, and it is going to maintain that road.

Mr. MACKEY: The assistance coming from the department will be by way of an appropriation, but not from band funds.

Mr. WOOD: That is right. And they had to get the consent of the band council before they could proceed with work on the highway at all.

Mr. HARKNESS: The Indians in Alberta maintain that the roads should be kept up by the province. That is all that they ask for.

Mr. WOOD: There is no argument about it in the case of Manitoba.

The CHAIRMAN: Section 34, subsection (1).

Carried.

Section 35, Local authorities may take lands with consent of G. in C.

LANDS TAKEN FOR PUBLIC PURPOSES

35. (1) Where by an Act of the Parliament of Canada or a provincial legislature His Majesty in right of a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest therein without the consent of the owner, the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands in a reserve or any interest therein.

(2) Unless the Governor in Council otherwise directs, all matters relating to compulsory taking or using of lands in a reserve under subsection one shall be governed by the statute by which the powers are conferred.

(3) Whenever the Governor in Council has consented to the exercise by a province, authority or corporation of the powers referred to in subsection one, the Governor in Council may, in lieu of the province, authority or corporation taking or using the lands without the consent of the owner, authorize a transfer or grant of such lands to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council.

(4) Any amount that is agreed upon or awarded in respect of the compulsory taking or using of land under this section or that is paid for a transfer or grant of land pursuant to this section shall be paid to the Receiver General of Canada for the use and benefit of the band or for the use and benefit of any Indian who is entitled to compensation or payment as a result of the exercise of the powers referred to in subsection one.

Hon. Mr. HARRIS: There were a number of objections to this section in the form of correspondence. There were none offered at the conference. There was some discussion about it but in the end there was no objection. Originally representations came from the Indians of The Pas, but the changes were unanimously agreed to. The Chief and Councillors of the Penticton Indian Reserve in British Columbia suggested that no lands should be taken without the consent of the Indians. The Blackfoot Band Council of Alberta objected; the Sarcee Indian Band objected; the Cree and Chipewyan Band, Athabaska agency objected; the Oka Band Council wanted a change in the wording and recommended adding the words "whole subject to legal prior notification of the band who shall have the power to make lawful representation before the decision is given."

The Indian Association of Alberta approved in principle, with the protest that any such expropriation is a violation of treaty and should be exercised only when there has been a proclamation of grave national emergency.

The president of the North American Indian Brotherhood objected. The Bands of Southern Vancouver Island suggested striking out the word "where" and inserting "only when a grave national emergency has been proclaimed."

The Blackfoot Band Council of Alberta objected to the word "surrender" and wanted to use the words "in trust."

The Union of Ontario Indians suggested that the consent of the band council should be necessary.

Now, the basis for this section is in the old Act and it continues the authority of the parliament of Canada, a provincial legislature, a municipal or legal authority or corporation, which by its authority has power to expropriate land. It may continue to have that right subject to the consent of the Governor in Council, subject to such terms as may be prescribed. This is a continuation of the previous discussion on the temporary use of land on the reserve. This is permanent expropriation of land on the reserve for public utilities and matters of that kind.

As I say the conference did not object to it. They understood that Indian reserve lands should be subject to the same form of expropriation that other lands in Canada have by the body having that purpose.

Mr. APPLEWHAITE: May I ask one question? Is Indian land under that section, or any other section, in any weaker position against expropriation than the same lands would be if owned by white men?

Hon. Mr. HARRIS: It is in a stronger position because the authority of all those corporations may, on non-Indian lands, be exercised under the particular statute, but here even if they have the authority they still must get the consent of the Governor in Council to exercise it.

Mr. HATFIELD: Who protects the Indians' rights?

Hon. Mr. HARRIS: The Governor in Council.

The CHAIRMAN: Shall 35(1) carry?

Carried.

Shall 35(2) carry?

Carried.

Shall 35(3) carry?

Carried.

Shall 35(4) carry?

Mr. HATFIELD: These payments under this Act go to the band fund, do they?

Hon. Mr. HARRIS: Yes.

The CHAIRMAN: Shall 35(4) carry?

Carried.

Section 36.

36. Where lands have been set apart for the use and benefit of a band and legal title thereto is not vested in His Majesty, this Act applies as though the lands were a reserve within the meaning of this Act.

Mr. HARKNESS: What reserves are there of that kind?

Mr. MACKEY: There are very few indeed. There is one in the county of Westmorland and in New Brunswick. I think the title was held by His Majesty for years. It was set aside for Indians but the title was held by His Majesty. The Indians still have the right to live there. There are a few of such reserves in Canada. In those cases the land was set aside by some class of organization for the use of the Indians and the title was held in the organization.

The CHAIRMAN: Shall the section carry?

Carried.

Section 37.

37. Except where this Act otherwise provides, lands in a reserve shall not be sold, alienated, leased or otherwise disposed of until they have been surrendered to His Majesty by the band for whose use and benefit in common the reserve was set apart.

Mr. HARKNESS: Does the wording "except where this Act otherwise provides", when read along with section 4(2) mean actually that section 37 can in almost any case mean nothing?

Hon. Mr. HARRIS: You do not read that with section 4(2); you read that with section 35, the immediately preceding expropriation clause, and 110(2), lands under enfranchisement.

Mr. HARKNESS: This has nothing to do with enfranchisement. It says "except where this Act otherwise provides, lands in a reserve shall not be sold, alienated, leased or otherwise disposed of—" and I would read that with section 4(2).

Hon. Mr. HARRIS: Section 4(2) has nothing to do with the sale, alienation, or leasing of lands—

Mr. HARKNESS: Yes, under section 4(2) the minister or the Governor in Council may declare the land not to be reserve land.

Hon. Mr. HARRIS: That would be a new interpretation of 4(2).

Mr. HATFIELD: You are on section 37 are you?

The CHAIRMAN: Yes.

Mr. HATFIELD: Does the minister sell the land if the band surrenders it to His Majesty, without making any investigation?

Hon. Mr. HARRIS: No, no, the provisions as to surrender come later. This is a general statement that no land shall be sold except by surrender to the Crown. The means whereby the land is later sold by the Crown comes along later. This says that the band council cannot sell their land without selling it to the Crown for sale to the public.

Mr. APPLEWHAITE: Is it not a fact that the lands in these Indian reserves are not registered or recorded in the provincial land registry offices and such registration is dependent upon a grant by the Crown; and therefore to sell it you have got to go through that procedure?

Hon. Mr. HARRIS: The actual title to the land is now in the Crown. It was provided in the beginning that Indians could not dispose of land for the reasons given this afternoon in connection with other matters, and the Crown would only be free to sell the land for the Indians, and there is therefore restriction placed upon that, and the Crown can only sell it after the Indians surrender it.

Mr. BLACKMORE: That means the Crown as represented by the Dominion of Canada.

Hon. Mr. HARRIS: Right.

Mr. HARKNESS: The words "except where this Act otherwise provides" you take to mean section 35 and section 110(2). To what does 110(2) refer?

Hon. Mr. HARRIS: That under certain conditions an Indian on becoming enfranchised may take his land with him.

Mr. HARKNESS: What would you think of the suggestion that instead of having "except where this Act otherwise provides" to have "except as provided by sections 35 and 110"?

Hon. Mr. HARRIS: We can refer that to Justice and see what they say about it.

Mr. HARKNESS: I think that would remove a considerable amount of fear which exists in the minds of some Indians that "except where this Act otherwise provides" will be read along with section 4(2) and they may lose their land.

Mr. BLACKMORE: I think so too.

Mr. HARKNESS: I think it would be much better as far as the Indians are concerned if the change was made.

Hon. Mr. HARRIS: No one has made that representation so I will have to give consideration to it.

The CHAIRMAN: 37 will stand.

Section 38.

Shall section 38(1) carry?

Carried.

Shall section 38(2) carry?

Carried.

Section 39?

39. (1) A surrender is void unless

(a) it is made to His Majesty,

(b) it is assented to by a majority of the electors of the band at

(i) a general meeting of the band called by the council of the band, or

(ii) a special meeting of the band called by the Minister for the purpose of considering a proposed surrender, and

(c) it is accepted by the Governor in Council.

(2) Where a majority of the electors of a band did not vote at a meeting called pursuant to subsection one of this section or pursuant to section fifty-one of the *Indian Act*, chapter ninety-eight of the Revised Statutes of Canada, 1927, the Minister may, if the proposed surrender was assented to by a majority of the electors who did vote, call another meeting by giving thirty days' notice thereof.

(3) Where a meeting is called pursuant to subsection two and the proposed surrender is assented to at the meeting by a majority of the members voting, the surrender shall be deemed, for the purpose of this section, to have been assented to by a majority of the electors of the band.

(4) The Minister may, at the request of the council of the band or whenever he considers it advisable, order that a vote at any meeting under this section shall be by secret ballot.

(5) Every meeting under this section shall be held in the presence of the superintendent or some other officer of the Department designated by the Minister.

Section 39(1)?

Mr. GIBSON: Has there been any objection to that clause?

Hon. Mr. HARRIS: There were two or three letters which said no decision should be reached unless a majority of the electors are present, but we have provided that.

The CHAIRMAN: Subclause (1)?

Carried.

Subclause (2)?

Carried.

Subclause (3)?

Carried.

Subclause (4)?

Carried.

Subclause (5)?

Mr. HARKNESS: In connection with all of these sections the situation comes down to this does it not? If you have got a band which refuses, we will say, to come to a meeting to vote on this question, and there are some bands I understand which take that attitude, it means that as long as you get anybody there—even though it may be five people out of 500—if three vote in favour of it you can still sell the land?

Hon. Mr. HARRIS: On a second vote.

Mr. GIBSON: It says "may", does that mean "shall"?

Hon. Mr. HARRIS: Not necessarily, but I should not think any minister would use the power under those conditions.

Mr. HARKNESS: I think some of the Six Nations Indians have at times refused to attend meetings for certain purposes. I believe some other bands have too, and I think there should be some protection for them even if they take that attitude which is contrary to the attitude we think they should take.

Hon. Mr. HARRIS: Are you serious about that?

Mr. HARKNESS: I am.

Hon. Mr. HARRIS: Are you not building up a state of mind for the Indian of which no one at this table approves?

The CHAIRMAN: The majority rule.

Mr. HARKNESS: But if you have an extreme case such as I mentioned you have not got a majority; you have a tiny minority.

Hon. Mr. HARRIS: The remedy lies in the hands of the Indian who is called upon twice to vote before that condition would arise.

Mr. HARKNESS: Nevertheless you have that attitude on the part of the band, for various reasons. In some cases the reason is that the government of Canada has no right to be holding votes in this connection at all—they do not recognize our jurisdiction.

Hon. Mr. HARRIS: Nothing in the Indian Act is going to give any countenance to that opinion.

Mr. HARKNESS: I still say that if you have that opinion, nevertheless, I do not think you should take a vote of a very tiny minority and use that as authority, for instance, to alienate the lands of the reserve.

Hon. Mr. HARRIS: As I said before I do not think any minister would do that under the conditions you have mentioned.

Mr. BLACKMORE: I did not hear what the minister said.

Hon. Mr. HARRIS: I said that I did not think, under the conditions Colonel Harkness mentioned, that any minister would continue with the sale.

Mr. BLACKMORE: There is one matter in connection with it that I think ought to be given quite a lot of consideration. There are some Indian bands so situated that it is exceedingly difficult for them to get together. In my constituency Indians in one reserve have to travel a hundred miles to get to a meeting. I think the minister can readily see that there will be real difficulty there if we apply the exact letter of this law as the clause has stipulated?

Hon. Mr. HARRIS: I think every effort is made to obtain the votes of all Indians and I would, I think, recommend to the appropriate authorities the dismissal of any officer or other official who called for a vote at a time when the band might be dispersed.

Mr. BLACKMORE: Well the Indians actually live all over a very long reserve.

Hon. Mr. HARRIS: But I imagine your constituency will be just as long as the Blood Reserve and appropriate action is taken to get all the votes there.

Mr. BLACKMORE: That would be fine if appropriate action were taken but the Indians, great numbers of them, would have no means of assembling.

Hon. Mr. HARRIS: I do not suppose there is a hall large enough to get them all assembled and to a certain extent they must be dispersed.

Mr. HARKNESS: I move we adjourn.

The CHAIRMAN: There are still a couple of sections here.

Mr. HATFIELD: What investigation does the minister make in these cases? Suppose there is a large block of land goes up for sale on some reserve, what investigation does the minister make before he agrees to permit the band itself to vote and sell it? I have known of cases where votes are purchased—

Hon. Mr. HARRIS: Well, there is usually a lot of preliminary correspondence and discussion and the department does not submit for approval of the band council an offer which is ridiculous. Certainly on some offers it might be difficult to determine the value of the land that is being surrendered. One might hold an opinion that the land was worth \$1,000 when it is worth \$600. However, if you had an offer of only \$200 it is hardly likely that the department would expect the band to consider it. However, when there is a reasonable offer the offer is presented to the band council. If the band council passes upon it they then order a vote and decide whether the offer is accepted.

Mr. HATFIELD: In a case of a vote on selling a block of land we have seen land sold for \$1,000 when it was worth \$100,000.

Hon. Mr. HARRIS: I do not think that has been in recent years.

Mr. HATFIELD: I know of it happening.

Hon. Mr. HARRIS: In recent years?

Mr. HATFIELD: Not recent, no.

Hon. Mr. HARRIS: If you will give me the reference I will look it up and see who was at fault at that time.

Mr. MURRAY: Which political party?

The CHAIRMAN: Shall we pass section 39? There are sections 40 and 41 here too.

Mr. BLACKMORE: Have we passed section 39?

The CHAIRMAN: We are down to subclause 5, anyway.

Mr. BLACKMORE: I move that we stop.

The CHAIRMAN: There are just two more before we get to the next page. Can we not pass those?

Mr. HATFIELD: I would like to know what investigation is made before the land is sold?

Hon. Mr. HARRIS: If you are thinking of something in the past, if it is a complaint against administration we can deal with it at any time.

Mr. HATFIELD: It is pretty easy to influence some bands of Indians to sell property. They may get something on the side and vote to sell it.

Hon. Mr. HARRIS: We have rigid provision here for protection in the taking of a vote and ascertaining the opinion.

Mr. HATFIELD: That is what I want to know. What investigation do you make?

Mr. MACKEY: The Indians themselves, Mr. Hatfield, set out the conditions in the surrender, the conditions under which the land is to be sold. For instance, we had a case in Vancouver. We hoped to get the surrender through or that surrender would be given, and the offer was quite good—an offer of about \$60,000. However, when the Indians found out what it was they rejected it and would not surrender. When they do surrender, the conditions they want imposed are placed right in the surrender. Usually it is stated that they will not accept less than a certain amount.

Mr. HATFIELD: That goes back to the Indians again, but I want to know what investigation the minister makes?

Hon. Mr. HARRIS: To cite one example, a more recent one, several independent real estate brokers were asked to give an opinion of a valuation just the same as a trustee selling land for an estate is expected to get opinions about the land. However, remember that it is not the minister's land, it is the Indians' land. They have the right to sell.

Mr. GIBSON: Is it usual that you plead for or against the matter?

Hon. Mr. HARRIS: We take an impartial view but if we see what we think is a ridiculous price we do not let the deal go forward.

Mr. GIBSON: And what if you think it is a good deal?

Hon. Mr. HARRIS: We would say so.

Mr. HATFIELD: What do you do to make sure that it is a good deal or a bad deal?

Hon. Mr. HARRIS: We get a real estate valuation.

The CHAIRMAN: Shall Section 39 carry?
Carried.

Section 40, certification of surrender.
Carried.

Mr. HATFIELD: The House adjourned some time ago, Mr. Chairman.
The CHAIRMAN: Section 41, effect of surrender.
Carried.

Thank you very kindly, gentlemen. It is now 6 o'clock.

The committee adjourned to meet again on Friday next, April 20, 1951, at 4 o'clock p.m.

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SESSION 1951
HOUSE OF COMMONS

SPECIAL COMMITTEE

APPOINTED TO CONSIDER

BILL No. 79

AN ACT RESPECTING INDIANS

CHAIRMAN—MR. DON F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

FRIDAY, APRIL 20, 1951

WITNESSES:

Hon. W. E. Harris, Minister of Citizenship and Immigration;
Mr. D. M. MacKay, Director, Indian Affairs Branch;
Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch.

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1951

MINUTES OF PROCEEDINGS

FRIDAY, April 20, 1951.

The Special Committee appointed to consider Bill No. 79, An Act respecting Indians, met at 4 p.m. this day.

Members present: Messrs. Applewhaite, Ashbourne, Blackmore, Boucher, Bryce, Charlton, Gibson, Harkness, Hatfield, Jutras, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Simmons, Welbourn, Whiteside, Wood.

In attendance: Hon. W. E. Harris, Minister of Citizenship and Immigration; Mr. D. M. MacKay, Director and Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch.

In the absence of Mr. Brown, the Chairman, and on motion of Mr. Applewhaite, seconded by Mr. Gibson:

Resolved,—That Mr. Jutras act as Chairman for this meeting.

A brief from the Six Nations Confederacy of the Grand River Country was tabled and copies distributed to the members of the Committee.

The Committee resumed consideration of Bill No. 79, An Act respecting Indians.

Clauses 42 to 65 inclusive, were adopted.

At 6 p.m. the Committee adjourned to meet again on Monday, April 23, at 11 a.m.

E. W. INNES,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

April 20, 1951.

The Special Committee appointed to consider the Indian Act met this day at 4 p.m. The acting chairman, Mr. R. N. Jutras, presided.

The CLERK: Our chairman is unavoidably absent this afternoon. Could we have an acting chairman elected for this meeting?

Mr. APPLEWHAITE: I move that, in the absence of the chairman, Mr. Jutras be requested to take the chair.

Mr. GIBSON: I second that.
Agreed.

The ACTING CHAIRMAN: Gentlemen, I believe we have a quorum. May I first thank you for the honour and may I assure you at the same time that I will discharge the responsibilities that go with the office in the most equitable manner.

We have here a circular letter which was handed to the chairman to be distributed to the members of the committee, submitted, I believe, on behalf of the Six Nations Confederacy.

At the time we adjourned on Wednesday I believe we were on section 42, "powers of minister with respect to property of deceased Indians." Page 14 of bill 79.

42. Unless otherwise provided in this Act, all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister, and shall be exercised subject to and in accordance with regulations of the Governor in Council.

Hon. Mr. HARRIS: The Indian Brotherhood of British Columbia wrote that they accepted these sections dealing with the descent of property in lieu of provincial regulations. They suggested that as soon as it can be expediently done control of the welfare of the Indians of British Columbia should be transferred to the government of the province.

The Indians of The Pas, Chemawawin, Matthias Colomb, Moose Lake, Red Earth, Shoal Lake and Split Lake Bands, Manitoba, unanimously agreed to the section.

The Indian Association of Alberta with respect to sections 43 and 44, wrote that it:

should be amended to read 'superintendent and council of the band' for 'minister'. Believe that powers vested in the minister should be invariably vested in the superintendent and the band council. Suggest sections 47, 48, 49 and 50 of the bill be deleted and for them substituted the present sections of the Indian Act.

Mr. BLACKMORE: May I ask the minister if this opinion was given recently or was it expressed at the time of the council?

Hon. Mr. HARRIS: I am coming to that. I am reading what took place on Bill 267, and since it was published the Blackfoot Band Council of Alberta:

Suggests present Indian Act with a board to travel from agency to agency to settle estates.

The bands of Southern Vancouver Island, Sonchees, Esquimalt, et cetera:

Suggest that power vested in minister should be vested in the band council, acting with the advice and consent of the Indian superintendent, in order to avoid dissipation of assets through prolonged legal formalities.

The Oka Band Council of Quebec on subsection (1):

Do not object to the minister having exclusive powers in matters of testamentary descent, but believe that before a decision is made by the minister an advisory committee comprising the Indian superintendent, chief, and oldest serving councillor should submit a report giving all the facts.

The sections were discussed then at the conference and there were no objections taken to the sections. There was some discussion on what they meant here and there but the conference accepted these sections unanimously. There were other representations generally that the minister should not handle estates, that they all should be handled through the provincial surrogate courts and if you will refer to section 44 you will see that the minister may direct that estates be so handled. To those who wrote in enquiring why we handled Indian estates for Indians I enquired whether they would feel that all Indian estates should be handled through the surrogate courts or would they limit it to estates of a certain high level value or to Indian bands which were close to a surrogate court, and then the difference of opinion became evident. They recognized that it was not a problem you could solve by making one rule and that perhaps this was the best system. So far as the future is concerned I did think that the Indian should get used to having his estate work done in the nearest court office in the more settled communities as part of our desire not to be managing his affairs when he could be managing them himself, but that would have to be carefully studied before we started decentralizing the work.

Mr. BLACKMORE: May I ask the minister whether or not, when the minister has been settling these cases, the work has been done just as part of the regular departmental work with no costs in connection with estate work being borne by the individual Indian?

Hon. Mr. HARRIS: To my knowledge no Indian has paid for any part of the services.

Mr. BLACKMORE: That would be an important consideration as far as the Indian was concerned; it would help him to save more of his inheritance.

Hon. Mr. HARRIS: It would be; but against that you must assess the possibility that at the moment he knows almost nothing about handling estates and will not learn how to do it unless he is given the opportunity. The fact is that whilst as a public service it was desirable to do this still you are subject to criticism for interfering in their affairs despite the fact they may want you to.

The ACTING CHAIRMAN: Shall section 42 carry?

Carried.

Section 43, subclause (a):

43. Without restricting the generality of section forty-two, the Minister may

(a) appoint executors of wills and administrators of estates of deceased Indians, remove them and appoint others in their stead,

Mr. APPLEWHAITE: I have two questions on section 43. Why in subsection (a) is the word "executors" used? I think when a civil court appoints an official to carry out the terms of a will it does not appoint an executor, they use the expression "administrator" and an executor is regarded as a person named by the deceased. Is there a reason for using the word "executor" there?

Hon. Mr. HARRIS: Yes, there is. I do not think you quite understand what a surrogate court does. It does, in fact, appoint an executor.

Mr. APPLEWHAITE: In British Columbia they do not, they appoint an administrator with the will annexed.

Hon. Mr. HARRIS: That is a misinterpretation on your part. May I suggest that the term "administrator" with will annexed is a grant of probate to a person not named in the will. Perhaps A has died, appointing B as executor but B is already dead, then a grant of administration with will annexed is made to C but if B were living it would be a grant to B and that would be the appointment of the executor by the court.

Mr. APPLEWHAITE: Then it is your intention when you use the word "executor" to confirm the executor who has been named by a deceased Indian.

Hon. Mr. HARRIS: Right.

Mr. APPLEWHAITE: Where you are appointing an administrator is it contemplated that he would always be an Indian or that the administrator might be an official of the department?

Hon. Mr. HARRIS: At the moment a very large number of them consist of the local agent at the request of the Indians but as part of our policy we do want Indians to become accustomed to do this business and we would appoint an Indian from the neighbourhood.

The ACTING CHAIRMAN:

Section 43, (a)?

Carried.

Subsection (b)?

Carried.

Subsection (c)?

Carried.

Subsection (d)?

Carried.

Subsection (e)?

Carried.

Section 44, subsection (1), courts may exercise jurisdiction with consent of minister.

Carried.

Section 44, (2) minister may refer a matter to the court?

Carried.

Subsection (3), orders relating to lands?

Carried.

Section 45 (1), Indians may make wills?

Carried.

Section 45 (2), form of will:

45. (2) The Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes or intention with respect to the disposition of his property upon his death.

Mr. APPLEWHAITE: I wonder if there should not be a word of explanation on that?

Hon. Mr. HARRIS: In most provinces there are certain formalities required in connection with a will. Usually they require that two witnesses be present at the signing and affix their signatures in the presence of each other and in the presence of the testator, but in this case we do not provide for that much formality, we provide that the minister may accept the will with little or no ceremony provided it can be shown that it was the expressed intention of the testator.

Mr. APPLEWHAITE: There are no set rules then for determining its validity?

Hon. Mr. HARRIS: Well, we have regulations as to what we hope will be observed on the part of a testator but the tendency is in Indian estates not to have wills well executed as in other society.

The ACTING CHAIRMAN: Shall section 45 (2) carry?

Carried.

Shall section 45 (3) carry, probate:

45. (3) No will executed by an Indian shall be of any legal force or effect as a disposition of property until the Minister has approved the will or a court has granted probate thereof pursuant to this Act.

Mr. HARKNESS: What is the meaning of this section 45 (3) particularly these words "disposition of property until the minister has approved the will or a court has granted probate thereof pursuant to this Act."?

Hon. Mr. HARRIS: Which section are you reading from?

Mr. HARKNESS: Section 45 (3).

Hon. Mr. HARRIS: We are back to our registry system again. I think it can be stated this way, that in most provincial jurisdictions an executor in possession of what on the face of it appears to be a valid will often proceeds to administer the estate or part of it before he actually takes out probate, and, of course, he has that authority because his authority derives from his appointment, as Mr. Applewhaite has said, by the deceased. Nevertheless, in due course he must obtain probate in almost every case I can think of and becomes accountable for his handling of the estate. We have provided here that that is not to be the case with respect to Indian wills because we do want to have an early approval of the will with respect to real estate particularly.

You will understand from subsection (3) of section 44, and from section 21, as I recall it, that we are the registry office for lands, and it would be better if all the formalities of the appointment of an executor, approval of the will, could be gone through before any steps should be taken to deal with the property of the Indian and particularly the lands on the reserve.

Mr. HARKNESS: You want to ensure that the assets of the estates are not dissipated by the executor named by the Indian before you either approve of it or it has been approved by a court.

Hon. Mr. HARRIS: Right.

Mr. ASHBOURNE: Does the minister think that it would not be safeguarding the rights of the Indians to have a witness to a will?

Hon. Mr. HARRIS: I do not want to convey a false impression. I do say in many cases wills by Indians do not have the formalities that would be necessary

on your will or mine but that for that reason we do not necessarily refuse probate of a will just because it has not those formalities, if we are convinced that it was in fact executed by that Indian.

Mr. ASHBOURNE: Would you have a record of the Indian's signature or something like that to be sure that this was the man's will?

Hon. Mr. HARRIS: Oh, yes, we would not accept anybody's word for it, but it often happens that there is evidence that can be shown that he said that he was going to make a will to so and so, and one is found like that. There are any number of circumstances that could arise in which there would be an injustice done if you did not observe the will.

The ACTING CHAIRMAN: Section 45, (3)?

Carried.

Section 46, (1), (a), minister may declare will void:

46. (1) The Minister may declare the will of an Indian to be void in whole or in part if he is satisfied that

(a) the will was executed under duress or undue influence,

Mr. HARKNESS: In connection with this whole clause would the minister tell us what differences there are with regard to those provisions from ordinary laws as they prevail in the provinces on the subject of wills, let us say, for example, in the province of Ontario. There is one which is quite apparently different, it is that concerning the disposal of land contrary to the interest of the band, but apart from that what differences are there, if any?

Hon. Mr. HARRIS: These are the ordinary provisions that in all our provincial jurisdictions would give rise to what we would call "breaking a will" and they give the minister jurisdiction equivalent to that of a provincial court for the purpose of deciding on the validity of a will under the normal rules of law.

Mr. HARKNESS: They are essentially the same, it does not put the Indian in any different position compared with the white man.

Hon. Mr. HARRIS: No.

Mr. GIBSON: It is a different judge.

The ACTING CHAIRMAN: Section 46, (1), (b)?

Carried.

Section 46, (1) (c)?

Carried.

Section 46, (1), (d)?

Carried.

Section 46, (1), (e)?

Carried.

Section 46, (1), (f), where will declared void:

46. (1) The Minister may declare the will of an Indian to be void in whole or in part if he is satisfied that

(f) the terms of the will are against the public interest.

Mr. SIMMONS: Would the minister explain subsection (f)? What does it mean?

Hon. Mr. HARRIS: I wonder if I could take you down to the law library and point out several volumes containing cases in which a will was void because it was contrary to public interest.

The ACTING CHAIRMAN: Shall 46 (1) (f) carry?

Carried.

Section 46, subsection (2), Where will declared void.
Carried.

Section 47, subsection (1), Appeal to Exchequer Court.

APPEALS

47. (1) A decision of the Minister made in the exercise of the jurisdiction or authority conferred upon him by section forty-two, forty-three or forty-six may, within two months from the date thereof, be appealed by any person affected thereby to the Exchequer Court of Canada, if the amount in controversy in the appeal exceeds five hundred dollars or if the Minister consents to an appeal.

(2) The judges of the Exchequer Court may make rules respecting the practice and procedure governing appeals under this section.

Hon. Mr. HARRIS: As the explanatory note indicates, this is a new provision in order to provide for appeal against any decision made by the minister under the circumstances which are set out.

Mr. APPLEWHAITE: If the amount is over \$500, the minister does not have to consent.

Hon. Mr. HARRIS: That is right.

The ACTING CHAIRMAN: Does section 47 subsection (1) carry?

Carried.

Subsection (2), Rules.

Carried.

Distribution of Property on Intestacy.

Section 48, subsection (1), Widow's share where net value less than \$2,000.

48. (1) Where the net value of the estate of an intestate does not, in the opinion of the Minister, exceed in value two thousand dollars, the estate shall go to the widow.

(2) Where the net value of the estate of an intestate, in the opinion of the Minister, is two thousand dollars or more, two thousand dollars shall go to the widow, and the remainder shall go as follows, namely,

(a) if the intestate left no issue, the remainder shall go to the widow,
(b) if the intestate left one child, one-half of the remainder shall go to the widow,

(c) if the intestate left more than one child, one-third of the remainder shall go to the widow,

and where a child has died leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate as if the child had been living at that date.

(3) Notwithstanding subsections one and two,

(a) where in any particular case the Minister is satisfied that any children of the deceased will not be adequately provided for, he may direct that all or any part of the estate that would otherwise go to the widow shall go to the children, and

(b) the Minister may direct that the widow shall have the right, during her widowhood, to occupy any lands on a reserve that were occupied by her deceased husband at the time of his death.

(4) Where an intestate dies leaving issue his estate shall be distributed, subject to the rights of the widow, if any, *per stirpes* among such issue.

(5) where an intestate dies leaving no widow or issue his estate shall go to his father and mother in equal shares if both are living, but if either of them is dead the estate shall go to the survivor.

(6) Where an intestate dies leaving no widow or issue or father or mother his estate shall go to his brothers and sisters in equal shares, and if any brother and sister is dead the children of the deceased brother or sister shall take the share their parent would have taken if living, but where the only persons entitled are children of deceased brothers and sisters, they shall take *per capita*.

(7) Where an intestate dies leaving no widow, issue, father, mother, brother or sister, and no children of any deceased brother or sister, his estate shall go to his next-of-kin.

(8) Where the estate goes to the next-of-kin it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in His Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister.

(9) For the purposes of this section, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

(10) Descendants and relatives of the intestate begotten before his death but born thereafter shall inherit as if they had been born in the lifetime of the intestate and had survived him.

(11) All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

(12) No widow is entitled to dower in the land of her deceased husband dying intestate, and no husband is entitled to an estate by curtesy in the land of his deceased wife so dying, and there is no community of real or personal property situated on a reserve.

(13) Illegitimate children and their issue shall inherit from the mother as if the children were legitimate, and shall inherit as if the children were legitimate, through the mother, if dead, any real or personal property that she would have taken, if living, by gift, devise or descent from any other person.

(14) Where an intestate, being an illegitimate child, dies leaving no widow or issue, his estate shall go to his mother, if living, but if the mother is dead his estate shall go to the other children of the same mother in equal shares, and where any child is dead, the children of the deceased child shall take the share their parent would have taken if living; but where the only persons entitled are children of deceased children of the mother, they shall take *per capita*.

(15) This section applies in respect of an intestate woman as it applies in respect of an intestate male, and for the the purposes of this section the word "widow" includes "widower".

(16) In this section "child" includes a legally adopted child.

Hon. Mr. HARRIS: I have only one comment to make. No, I mean that I have two comments. First, as the explanatory note says:

This section is founded on the uniform Intestate Succession Act prepared by the commissioners on uniformity of legislation in Canada, and replaces section 26.

The use of the word "founded" indicates that it does not follow precisely the report. The main difference lies in subsection (2) where we have provided that

(2) where the net value of the estate of an intestate, in the opinion of the minister is two thousand dollars or more, two thousand dollars shall go to the widow, and the remainder shall go as follows, namely, . . .

There was some discussion at the conference and some opposition was expressed. There was an expression of opinion contrary to this. They said that few Indian estates exceeded \$2,000, and that it was unfair to give to the widow the estate where there were children concerned who should be protected. But when I pointed out to the conference the provisions of subsection 3-A which provided that the minister might protect the interests of children if he felt that they would not be otherwise protected, then under those conditions the conference accepted this section.

The ACTING CHAIRMAN: Section 48, subsection 1.

Carried.

Subsection (2), Widow's share where estate \$2,000 or more.

Carried.

Subsection (2) (a).

Carried.

Subsection (2) (b).

Carried.

Subsection (2) (c).

Carried.

Mr. ASHBOURNE: What is the practice, Mr. Chairman? Is it the practice that the mother should become the guardian of the child?

Hon. Mr. HARRIS: We have a clause on guardianship.

The ACTING CHAIRMAN: Section 48, subsection (3) (a), Where children not provided for.

Carried.

Subsection (3) (b), Right to occupy lands.

Carried.

Subsection (4), Distribution to issue.

Carried.

Subsection (5), Distribution to father and mother.

Carried.

Subsection (6), Distribution to brothers, sisters and issue of brothers and sisters.

Carried.

Subsection (7), Next-of-kin.

Carried.

Subsection (8), Distribution amongst next-of-kin.

Carried.

Subsection (9), Degrees of kindred.

Carried.

Subsection (10), Descendants and relatives born after intestate's death.

Carried.

Subsection (11), Estate not disposed of by will.
Carried.

Subsection (12), No dower or estate by curtesy.

Mr. HARKNESS: Mr. Chairman, why is there no community of personal property on reserves? I can see why there should not be any community with respect to real property, but why should there not be any in connection with personal property?

Hon. Mr. HARRIS: With the exception of the province of Quebec, if I remember correctly, there is no law of community property with respect to personal goods in Canada. But I am not an authority, and if there is a law, then I speak subject to correction.

Mr. HARKNESS: I think there is in our province, Mr. Chairman.

Hon. Mr. HARRIS: Is there?

Mr. HARKNESS: I think there is community of household effects and so forth, but I am not certain of it. However, I think that is the case.

Hon. Mr. HARRIS: If you would like to look into it, it would be all right.

Mr. HARKNESS: I do not think it is an important point. I just wondered why the first one was in there. Apparently the reason is that this community of property is only provided so far as Quebec is concerned.

Hon. Mr. HARRIS: That is my recollection.

The ACTING CHAIRMAN: Subsection (12), No dower or estate by curtesy.
Carried.

Subsection (13), Illegitimate children.
Carried.

Subsection (14), Intestate being an illegitimate child.
Carried.

Subsection (15), 'widow' includes 'widower'.
Carried.

Subsection (16), Child.
Carried.

Section 49, Devisee of lands not entitled to possession until possession approved.

49. A person who claims to be entitled to possession or occupation of lands in a reserve by devise or descent shall be deemed not to be in lawful possession or occupation of that land until the possession is approved by the Minister.

Mr. BLACKMORE: What is the purpose of that section, Mr. Chairman?

Hon. Mr. HARRIS: The same purpose that we had under section 21, that where an Indian devises land to his heir, the heir is not lawfully in possession until the will has been probated, and the transfer recorded in the registry office.

Mr. BLACKMORE: To avoid dispossession?

Hon. Mr. HARRIS: That is right.

The ACTING CHAIRMAN: Shall section 49 carry?
Carried.

Section 50.

50. (1) A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession or occupation of land in that reserve.

(2) Where a right to possession or occupation of land in a reserve passes by devise or descent to a person who is not entitled to reside on a reserve, that right shall be offered for sale by the superintendent to the highest bidder among persons who are entitled to reside on the reserve and the proceeds of the sale shall be paid to the devisee or descendant, as the case may be.

(3) Where no tender is received within six months or such further period as the Minister may direct after the date when the right to possession or occupation is offered for sale under subsection two, the right shall revert to the band free from any claim on the part of the devisee or descendant, subject to the payment, at the discretion of the Minister, to the devisee or descendant, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

(4) The purchaser of a right to possession or occupation of land under subsection two shall be deemed not to be in lawful possession or occupation of the land until the possession is approved by the Minister.

Subsection (1), Devisee not entitled unless resident on reserve.

Mr. APPLEWHAITE: I would say that this section is all right, but that the marginal note is wrong.

Hon. Mr. HARRIS: The marginal note reads "Devisee not entitled to possession unless resident on the reserve."

Mr. APPLEWHAITE: He is entitled to be resident on the reserve, though he may not be a resident. So I think the section is all right but the marginal note is a little misleading.

The ACTING CHAIRMAN: Shall subsection (1) carry?

Carried.

Subsection (2), Sale by superintendent.

Carried.

Subsection (3), Unsold lands revert to band.

Carried.

Subsection (4), Purchaser not entitled to possession until possession approved.

Carried.

Mentally Incompetent Indians.

Section 51.

Subsection (1), Powers of Minister generally.

Carried.

Subsection (2) (a), particular powers.

Carried.

Subsection (2) (b).

Carried.

Subsection (2) (c), Property off reserve.

Carried.

Subsection 51 (3) 2 carried.

Guardianship.

Section 52.

GUARDIANSHIP

52. The Minister may administer or provide for the administration of any property to which infant children of Indians are entitled, and may appoint guardians for such purpose.

Hon. Mr. HARRIS: This section is not quite as it is in 267, and it has given rise to a good deal of confusion. This section has to do with the appointment of guardians for the preservation and administration of the infant's share of the estate. It has nothing to do with the appointment of guardians of the body.

If anyone seeks to be appointed as a guardian of an Indian infant, the decision has to be made by the provincial authorities who have the usual processes for the appointment under those conditions. This only relates to the minister's appointing someone to interest himself on behalf of the Indian infant in his rights to an estate, in a way which is similar to the official guardians who are appointed by provincial governments to look after the rights of non-Indian infants.

Mr. BLACKMORE: Could the minister give us some idea of the technique to be followed in a case of an Indian infant? I mean the technique by which control of the infant is taken over by the province? I would imagine that Indian infants are not registered as regularly as non-Indian infants are.

Hon. Mr. HARRIS: As a rule the question of guardianship does not become a matter for court proceedings. There is usually an aunt or an uncle who is willing to look after the child. But if it should become a matter of dispute, it is handled by the province in the provincial courts, and probably through the Children's Aid Society or something of that nature.

Mr. BLACKMORE: But if the Indian infant's relatives saw fit to give permission to the provincial authorities to take over the child, that would be sufficient, would it not?

Hon. Mr. HARRIS: That is right.

Mr. HARKNESS: What ordinarily happens is that some relative will take over the child, and there is no resort to the province or anything.

Hon. Mr. HARRIS: That is right.

Mr. HARKNESS: And nobody interferes.

Hon. Mr. HARRIS: That is right.

Mr. BLACKMORE: Under the decision the control of the child becomes transmitted from the individual to the province?

Hon. Mr. HARRIS: I was not suggesting that it would be.

Mr. BLACKMORE: But just in case that it was?

Hon. Mr. HARRIS: The minister does not intervene in any way. However, if a dispute arose between, let us say, two uncles of the Indian child as to the custody of that child, we would seek to have a decision made by the provincial authorities under their normal procedure for determining who should have the custody of that child.

Mr. BLACKMORE: But in case of a dispute would the matter come into the hands of the minister, with the understanding that he would work with the provincial authorities?

Hon. Mr. HARRIS: The minister would only see that the matter was decided in the manner I have indicated. I have no jurisdiction here.

Mr. HARKNESS: The provincial Child Welfare authorities could step in in any case if they wished to do so?

Hon. Mr. HARRIS: I did not mean to convey that impression.

Mr. HARKNESS: Then the only case in which they could step in would be if they were requested to do so?

Hon. Mr. HARRIS: If the dispute came before a provincial court, my recollection is that most provincial magistrates dealing with matters of that kind would obtain information from the Children's Aid Society as to what they should do in respect to that child.

Mr. HARKNESS: But suppose the provincial authority thought that the uncle of a child was not the proper person to look after it, they would still have the right to come and take the child away?

Hon. Mr. HARRIS: I think it would depend on the judge as to who should have the custody.

Mr. HARKNESS: They would have to refer the matter to the court if they wanted to do that?

Hon. Mr. HARRIS: That is right.

Mr. BLACKMORE: But that would have to be with the consent of the minister, would it not?

Hon. Mr. HARRIS: No. The minister has no decision to make. He would naturally do what he could with the assistance of the agent to see that the proper thing was done with respect to the custody of the child.

Mr. BLACKMORE: So the minister or the agent would have the ultimate jurisdiction over the child?

Hon. Mr. HARRIS: We have jurisdiction over the child in respect to his band membership but not with respect to his custody.

Mr. MURRAY: You have it with respect to his property, though?

Hon. Mr. HARRIS: Yes.

Mr. BLACKMORE: Why should the minister and the agent not assume jurisdiction naturally over the custody of the Indian child just as well until such time as there is a formal surrender to the provincial authorities?

Hon. Mr. HARRIS: The agent, of course, would take every step that he could to assist the child during the unfortunate period following the death of the parents. I have no doubt that the advice of the agent would be asked for in almost every case, and that he would probably make suitable arrangements for the child. But when there is any dispute, we have no jurisdiction to see that a child shall be looked after by any Indian.

Mr. APPLEWHAITE: Upon the death of one parent the survivor automatically becomes the guardian of the infant child.

Hon. Mr. HARRIS: That is the practice and, any court that I have had any experience with would uphold the right of the remaining parent—unless that parent is mentally incompetent or under some other disability.

Mr. APPLEWHAITE: Is there anything different in the status of an Indian to that of anyone else in so far as their competence to appoint a guardian by will?

Hon. Mr. HARRIS: No.

Mr. CHARLTON: What would happen if this child was adopted by someone off the reserve, would the child be still under the Indian Act?

Hon. Mr. HARRIS: Upon legal adoption, by the procedure before a county court judge in Ontario, and I presume a similar officer elsewhere, the person would cease to become an Indian and become a child of the parent.

Mr. APPLEWHAITE: With your consent or without your consent?

Hon. Mr. HARRIS: We would naturally be consulted.

Mr. CHARLTON: In that case?

Hon. Mr. HARRIS: Yes.

Mr. CHARLTON: That would be automatic enfranchisement of the child would it not?

Hon. Mr. HARRIS: Quite.

Mr. CHARLTON: Would that child have no right to go back when it was of age?

Hon. Mr. HARRIS: The director has corrected me and he says that the child is not enfranchised by adoption. Perhaps the director had better explain.

Mr. MacKAY: Indian children are, of course, adopted as a rule under the laws of the particular province in which the Indian resides and my understanding of it is that the child remains an Indian, even under adoption off the reserve, until he or she becomes enfranchised.

Mr. CHARLTON: Until it becomes enfranchised—

Mr. MacKAY: Or in other words takes on white status.

Mr. CHARLTON: At the age of 21?

Mr. MacKAY: No, the age of 21 has not anything to do with it—unless of course, being a female, it marries a white person and then it automatically assumes non-Indian status.

Mr. CHARLTON: Can an Indian child become enfranchised under the age of 21 without the parents' consent thereto?

Mr. MacKAY: No.

Mr. CHARLTON: Why would it be then that an Indian child adopted off the reserve would become enfranchised?

Mr. MacKAY: I am not saying that.

Hon. Mr. HARRIS: Mr. MacKAY is correcting me, indicating that my answer was wrong. He says that an Indian child that is adopted by a non-Indian does not become enfranchised by adoption.

Mr. BLACKMORE: Until what age?

Hon. Mr. HARRIS: It remains an Indian until it becomes enfranchised, unless being a female it marries a white person.

Mr. HARKNESS: It may go back to the reserve all its life?

Mr. MacKAY: Yes.

Mr. HARKNESS: It can go back to the reserve any time it wants?

The ACTING CHAIRMAN: Shall section 52 carry?

Carried.

Section 53?

53. (1) The Minister or a person appointed by him for the purpose may manage, sell, lease or otherwise dispose of surrendered lands in accordance with this Act and the terms of the surrender.

(2) Where the original purchaser of surrendered lands is dead and the heir, assignee or devisee of the original purchaser applies for a grant of the lands, the Minister may, upon receipt of proof in such manner as he directs and requires in support of any claim for the grant and upon being satisfied that the claim has been equitably and justly established, allow the claim and authorize a grant to issue accordingly.

(3) No person who is appointed to manage, sell, lease or otherwise dispose of surrendered lands or who is an officer or servant of His Majesty employed in the Department may, except with the approval of the Governor in Council, acquire directly or indirectly any interest in surrendered lands.

Mr. BLACKMORE: I wonder if the minister would care to comment on the acceptability to the Indians of section 53?

Hon. Mr. HARRIS: I will see if there are any objections here. The Indian Association of Alberta suggested deleting the words "except with the approval of the Governor in Council" in subsection (3). That is the only comment we have.

These are the existing sections which in effect give the minister and persons appointed by him statutory authority to proceed to manage, sell, lease, or otherwise dispose of lands which have already been surrendered for that purpose—under section 39, I think it is of the Act, which we discussed the other day.

Mr. BLACKMORE: What reason did they give? Can the minister tell us what reason they gave for desiring the deletion of those words?

Hon. Mr. HARRIS: I did not catch the question.

Mr. BLACKMORE: I was wondering what reason the Indians gave for desiring the deletion of those words?

Hon. Mr. HARRIS: They did not give any reason—well, the argument was that it was possible that someone in the department, to interest themselves in the sale of lands which have been surrendered by an Indian.

Mr. BLACKMORE: Well, do the words in there not guard against that? I would imagine those very words would.

Hon. Mr. HARRIS: No, if you eliminate the words “except with the consent of the Governor in Council” it is a statutory prohibition against any person who has had anything to do with the sale to be a purchaser.

Mr. MURRAY: Do you not think it would be well to delete those words?

Hon. Mr. HARRIS: We have considered it and the principle is sound that no person who has had anything to do with this should be a purchaser to the detriment of the Indian. We are, however, in this awkward position. In the provincial courts, as you know even an executor can purchase estate property if he convinces the surrogate court judge that the offer he has made is a fair offer. That is usually done by filing affidavits of valuers, and so on. If the surrogate court judge is convinced that no other more favourable offer will be received, he can, and in a good many cases does, order a sale to the trustee of his trust property.

Now we have this practice when land is surrendered for sale or lease. We not only instruct the local agents but any other person we think would be interested that it is up for sale. We employ real estate agents to sell it. It may well be that we send out instructions to several agents, for example, and they all make efforts to sell. One may come along and say: “Had you not had me on the mailing list I would have been interested in the purchase of that property. However, I received a letter instructing me to sell and I would like to buy. I am prepared to tender in competition with anyone else. I am prepared to make an offer which I can show is reasonable, and you can take any steps you want to make up your own mind whether it is reasonable or not.”

So, under those conditions, if we did not have the right to sell to that person no matter how remotely he may be connected with the management of the land we may be debarred from making an advantageous sale.

Now, we have put in here a safeguard that this shall not be done without the consent of the Governor in Council. That procedure is comparable to the procedure of a trustee or executor appearing before a surrogate judge, and under the same circumstances proving to him that he might have an opportunity to purchase.

Mr. HATFIELD: Is it the policy of the department to sell lands to people off the reserve?

Hon. Mr. HARRIS: This is surrendered land which has been voted to be sold by the band.

Mr. HATFIELD: I know, but sold to an outsider?

Hon. Mr. HARRIS: By all means; they usually pay more.

Mr. HATFIELD: Why should the department sell lands from the reserve?

Hon. Mr. HARRIS: We do not sell land except as agent for the Indian band which has already decided to sell the land.

Mr. HATFIELD: Oh, yes, but it is easy to get their consent to sell the land.

Hon. Mr. HARRIS: In New Brunswick?

Mr. HATFIELD: In any part of Canada.

Mr. MURRAY: This is where land is being sold to employees of the department?

Hon. Mr. HARRIS: No, no.

Mr. MURRAY: The side note indicates that.

The ACTING CHAIRMAN: Perhaps we had better carry subsections 1 and 2. This is really all on subsection 3.

Shall 53 (1) carry?

Carried.

Shall 53 (2) carry?

Carried.

Now, Mr. Hatfield, 53 (3).

Mr. HATFIELD: It is easy enough to go in with some money and get a band to say that they will sell off the reserve—a piece of lumber land or something; but I do not think the reserves should be sold at all.

Hon. Mr. HARRIS: Well you cannot legislate here and say that an Indian cannot sell his land. You would be depriving him of almost the only right he would insist on outside of being alive.

Mr. HATFIELD: I am not talking about land that has been given to him on the reserve, a parcel of land, but we should protect the Indian from selling their lands and selling them at a low price. There has been a lot of land sold off reserves at ridiculous prices. It is valuable property today.

Hon. Mr. HARRIS: Let us be practical and realistic. What do you suggest? That we stop selling lands at the request of the Indians?

Mr. HATFIELD: I think you would have to have a good reason to sell land from any reserve. I think the reserves should be kept intact for the Indians.

Hon. Mr. HARRIS: What would you substitute in that case for the income the Indian now receives or the money he now receives from the sale of land?

Mr. HATFIELD: He should not be allowed to sell land. The land should be part of the reserves and always kept for the Indians. I have one reserve in my constituency where practically everything has been sold. Square miles of tracts of lumber lots have been sold off to lumbermen. They have gone in there, cleaned out that land, and the reserve has been practically all sold. There is no land that is any good on the reserve. This land where they cut lumber should be reforested.

Hon. Mr. HARRIS: Let us not get into that at the moment. Let us confine ourselves to the land.

Mr. HATFIELD: I know, but I do not believe the land should be sold. The reserves have been built up for Indians; why not keep them that way—unless the Indians die off and they do not have need of it.

Hon. Mr. HARRIS: An Indian is a man like you or I. If he gets a good offer for land he is not using or if he would rather have the money for that land, how can you prevent him from selling it?

Mr. HATFIELD: I know a piece of land which was sold some years ago for 500. It is worth \$1 million today.

Mr. APPLEWHAITE: It would not have been worth \$1 million if it had remained on the reserve.

Mr. WOOD: Do you know what year that was?

Mr. HATFIELD: A good many years ago.

Mr. WOOD: I have in mind a sale back in 1912 and which was put through in my constituency. It was a little bit shady and I just wonder if this changes the Act.

Hon. Mr. HARRIS: No, no.

Mr. WOOD: It is the same?

Hon. Mr. HARRIS: Yes.

Mr. HATFIELD: The minister might act in good faith but someone might get a few Indians together to vote to sell a piece of land. It might be valuable land. I think there should be some more protection. This minister before us now might be all right, but he might not be the Minister of Indian Affairs and this would not come under him forever.

Hon. Mr. HARRIS: Let us keep the personal factor out of it. Ministers come and go very quickly. You can only do what we are doing now. You can only have protection built up—

Mr. HATFIELD: When these reserves were set up for the Indians was it the idea to sell them whenever they wanted, in pieces? Or do away with them?

Hon. Mr. HARRIS: No, but it became obvious early in Indian administration that the Indian's welfare was the first consideration and that if a reserve had land which was not in use by the Indians, or which was not productive, or which was perhaps not as attractive as the money value of the land would be, that they should be given the opportunity of disposing of it.

Mr. MURRAY: There is—

Hon. Mr. HARRIS: Excuse me, a moment. If it were not for sales of land made off reserves there are many bands in this country which would not be in relatively secure position they now enjoy. We have \$20 million in the bank here which is drawing interest and is available for their benefits which has been built up by the sale of land which they thought they would rather sell than keep.

Mr. HATFIELD: Is that trading money, or outside funds?

Hon. Mr. HARRIS: That is money that has been obtained from the sale of land to date, and the money goes to the benefit of the Indians. I agree that there may well have been errors made in the sale of land in the past, but such errors should not condemn the general policy which has been to the advantage of the Indian.

Mr. HATFIELD: I think it should be general policy.

Mr. MURRAY: I recall the sale in Victoria in connection with the Songhieu Indian reserve which is right in the heart of the city of Victoria, and a tremendous profit was made on the re-sale of that land. And there was another deal in connection with the Kitsalino reserve in Vancouver which turned out to be a very scandalous matter and resulted in the overthrow of the government when the fact got out. I should like to see a change in the wording here so as to exclude the possibility of anyone jumping in and making an excessive profit at the expense of the Indians, as was done in the cases to which I refer. A lot of these deals with Indians about lands are put through on the basis of friendship and things of that kind. Take the Squamish Indians, for instance; they have a lot of land which is of very great value because it is right in north Vancouver; also at Kitsalino, the land of that band is right in the heart of Vancouver, and it was worth quite a few millions of dollars to them when they did sell it.

Mr. MACKAY: That transaction was one which was carried out between the provincial government and the dominion government, in the case of the Kitsalino Indian reserve. The government of Canada refused to recognize the terms of sale as made by the provincial government of that day with the Indians, with the result that the land remained in the possession of the Indians

until a few years ago when they surrendered it, but in surrendering it they stipulated, it was suggested to them, that in the surrender value should be included a price which they should put on the land, and in this surrender value they included the sum of \$600,000 with respect to the area which was formerly a part of the Kitsalino Indian reserve. Now, this \$600,000 was over and above the amount fixed by the local appraisers of the land, and the department agreed to accept the surrender on that basis; and the \$600,000 is the amount that the department will eventually secure for these Indians as a result of that surrender. The Indians today are not in the hurry to surrender their land. Just a short time ago the very tribe to which you referred, the Squamish Indians, came to Ottawa in a connection with a surrender of land on their reserve. We did not encourage them. They wanted a considerably larger figure for the property than the parties interested in the land were willing to offer. But they approach the Indians themselves in this matter, the department does not do the purchasing.

Mr. HATFIELD: But the department agrees to it. I think there should be a fair investigation whenever there is to be any land sold on any of these reserves. I think a commission should be set up to investigate all land it is proposed to sell on these reserves to set a value on it so the department here would know. The department, the director of Indian Affairs, the minister, could not possibly travel the land and investigate all these cases, but I think some protection must be given the Indians in a matter of this kind, rather than allow someone just to go in there and get them to agree to a sale.

Mr. GIBSON: Did you ever try doing that yourself?

Hon. Mr. HARRIS: That is the answer, you try to do it.

Mr. HATFIELD: I know it has been done in the past.

Mr. BLACKMORE: In a general way I think this goes to the basis of the matter, and that it is sound. In this Act we already have provision to protect the Indian from improvidently disposing of his goods, as has been the case in times past; and had it not been for this provision the Indian would have been impoverished further through improperly disposing of his property, property on the reserve which belongs to the band, and there are occasions where transactions of this kind are made on a large scale. The band in many cases is not capable of foreseeing the ultimate value of these properties. I do believe that we should lay down as a principle of policy that the lands are reserved for the benefit of the Indians and continue to be more or less sacred to the Indians until such time as the Indians have all disappeared from the reserve by absorption into the body politic. Otherwise, I think we will have a situation in 150 years, for example, similar to that which we now have on our hands in some places, an extremely difficult situation, because of things of this kind. I don't suppose this is the proper place to discuss that. I think the minister agrees with the principle involved, safeguarding to the Indians the right to their land. I know that it has been the cause of considerable concern to determine at just what stage an Indian should be permitted to surrender his land. I find myself a little worried for fear this principle, which I consider to be a quite valuable one, might tend to be disregarded, because of the money which was being offered for the surrender of land on reserves. I would say that we should lay that down as a principle. Whoever had the responsibility of putting a value on the land could not possibly put a value on it which would apply for all future time. If the government have arrived at the time when they think it is necessary to build up a fund for the benefit of the Indians I think they should find some other means whereby it can be done rather than by impoverishing the tribe.

Hon. Mr. HARRIS: I agree in principle that every care should be exercised in the surrender of Indian land. But I think you will agree with me that there are cases where we have to face the immediate prospect that perhaps the members of that band do not require the acreage. As to all deals which come before us, I think that one can agree that the tendency would be to load on such sales with scepticism as to their value. But having said all that, and having taken all the precautions to determine the value of the land in the light of the best expert opinion you can get; on the basis of the information that you would try to get if you yourself were dealing with your own land; there must be times when it would be in the interest of the band itself to make such sales. For example, I have in mind two bands, one in your own province, which has been, I think, much better off from the sale of land on one occasion. It might have been that their position during the past 20 or 25 years, since the sale, would have been much worse without the sale. It would not have been the answer to say that they would have been better off had they not been able to sell their land. Public opinion would consider the worth of the land and would say: let them sell the land. I have another band in mind where the numbers are small now and there does not seem to be any possibility that they will grow very much. They have quite a lot of valuable land and they have been offered sums which to me are astronomical, and which if invested under ordinary circumstances would make every man, woman and child of that band independent for life.

Mr. HATFIELD: There must be an oil well out there.

Hon. Mr. HARRIS: Pardon me?

Mr. HATFIELD: Is there an oil well?

Hon. Mr. HARRIS: No, there is no oil well on the land. And under those conditions, to put it on a very low basis perhaps, first of all, we should not be required to spend departmental money on administering their affairs and looking after their welfare when they could have that money in the bank; and neither for that matter should they be a charge on the government; and, on top of that, should something happen that for some reason or other that land in the future should not have the value it has today we would be charged with neglect of our responsibility to the Indians at that time. The criticism would have been; you should have sold that land. And it would be no answer to say: you didn't allow us to do it.

Mr. HATFIELD: The answer to that is in '68 and '69. You will find that some members of parliament objected to paying the Hudson Bay Company a million and a half dollars for what is now the northern half of Quebec, the northern half of Ontario and the three Prairie provinces. In those days they thought it was just throwing the money away to pay a million and a half dollars for all that land. I know that members from Nova Scotia and New Brunswick took a small amount for their interest in the land, and out of that the three prairie provinces were set up. As a matter of fact, they almost gave the land away, although at that time they said it was of no value. If you add to that land which was given to Quebec and Ontario all that northern country just consider what that land is worth today to those provinces; and, take the three prairie provinces, one oil well I suppose, in Alberta or Saskatchewan, is today worth at least a million and a half.

Mr. HARKNESS: More than that.

Hon. Mr. HARRIS: I do not think you seriously want to put yourself in a position of amending the Indian Act in such a way.

Mr. HATFIELD: But I do suggest that you should put in some reservation.

Hon. Mr. HARRIS: Think of what we might be doing if we were to accept your argument; we would be postponing the benefits from the sale of land for perhaps several generations; and then some member might come along at that

time and say: "Well, was that a wise move? Four or five generations of Indians have suffered a lower standard of living", and their criticism would be as to the value of the land, that it should have been sold.

Mr. APPLEWHAITE: I do not think I quite agree with this proposition. I find myself more in agreement with Mr. Blackmore. In the case of the surrender of land, does that have to be approved by the band?

Hon. Mr. HARRIS: Yes, by a majority vote of the band.

Mr. APPLEWHAITE: So that gives the Indian band some measure of control over their lands. I presume the department has supervision where Indian reserves are set up. I am not talking of control. I am talking of cases that we know of, reserves that have been set up where residents may have the responsibility of having their own homes. All over the country these Indian reserve lands are becoming more valuable and they are no longer available to the Indian for the purposes for which they were originally set up. They have a cash value to the Indians, they are worth so much cash, and the department doubtless may have something else which would replace the reserve they are going to lose. Where they remain on the reserve it has a decreasing value for the purposes for which it was intended, and they should have some compensation; and it is not an argument to say that if these reserves are sold by the Indians for what is a fair price now that that will be a fair price 50 years from now when probably it might then be worth hundreds of dollars a square foot; because as long as it remains an Indian reserve its value will not go up, the value goes up after it ceases to be an Indian reserve, after it is built upon and after it is developed. For that reason I think it is necessary to see that the Indian land is sold at a fair value, particularly when that property ceases to be of value when it is held as a reserve. I think they would have a fair value if they continue to use the land for farms, if it were farming land and retained it for that purpose, but take in the case of a city like Regina, it might be worth very much more to them if it were sold.

Mr. HATFIELD: What about retaining the land and selling the results of it?

Hon. Mr. HARRIS: We do that.

Mr. HATFIELD: Year by year.

Hon. Mr. HARRIS: We do that.

Mr. HATFIELD: Would they not get more value that way for it than they would by selling it?

Hon. Mr. HARRIS: Sometimes they would and sometimes they would not, and we use our best judgment to decide which is which.

Mr. HATFIELD: In some cases it may be all right, in other cases I think a commission should be appointed to cover the territory and to look into the value of lands before they are sold.

The ACTING CHAIRMAN: Shall section 53, (3) carry?

Carried.

Section 54, assignments?

Carried.

Section 55, (1), surrendered lands register:

55. (1) There shall be kept in the Department a register, to be known as the Surrendered Lands Register, in which shall be entered particulars in connection with any lease or other disposition of surrendered lands by the Minister or any assignment thereof.

(2) A conditional assignment shall not be registered.

Mr. BLACKMORE: Would the minister comment on section 55, if he feels so disposed?

Hon. Mr. HARRIS: We had a recommendation from the Indian Association of Alberta with respect to subsection (2), which reads that we should strike out the word "not". In other words, that subsection (2) should read "A conditional assignment shall be registered".

Now, this has to do first with surrendered lands, lands that have already been turned over to the crown for sale by the Indian, and this provides that we shall have a register of those lands, and where A purchases land from the department under an agreement whereby he pays 10 per cent or 20 per cent down and the rest is spread over a number of years, we would record that agreement and we would permit him to assign that to another purchaser B, but we would not record that if in the arrangement between A and B certain conditions were inserted which would require us in fact to act as an umpire later on to decide whether those conditions have been carried out and ultimately to grant or refuse the letters patent to B. That is, if A purchases land for \$1,000 and assigns it to B for \$1,500 provided that B would do certain work on the land in the meantime, we do not want to be put in the position of acting as a policeman between A and B to enforce any part of their contract.

Mr. BLACKMORE: That condition would be the result of the recommendation of the Alberta Indians?

Hon. Mr. HARRIS: It would be the result of their recommendation that if an arrangement like that was made we would have to intervene then to see that it was carried out before the contract was completed. We do not feel that we should be obliged to do that.

The ACTING CHAIRMAN: Section 55, (1)?

Carried.

Section 55, (2)?

Carried.

Section 55, (3)?

Carried.

Section 55, (4), effect of registration:

55. (4) An assignment registered under this section is valid against an unregistered assignment or an assignment subsequently registered.

Mr. HARKNESS: Just one point in connection with those sections, does this mean that land that has been surrendered and is then sold—to a white person in nearly all cases—is not registered under the provincial land titles office, the only register of it would be in your department?

Hon. Mr. HARRIS: Right.

Mr. HARKNESS: Is there any provision for changing that register?

Hon. Mr. HARRIS: Pending the grant of letters patent; when letters patent are granted, of course.

Mr. HARKNESS: Registry would then go to the provincial land titles office?

Hon. Mr. HARRIS: It is on our registry in the meantime, recording the sales.

Mr. HARKNESS: In other words, as soon as the land is fully paid for, the land goes to the province.

Hon. Mr. HARRIS: Right.

Mr. MURRAY: Does that (b) take in the question of oil rights on the property?

The ACTING CHAIRMAN: What do you mean, (b)?

Mr. MURRAY: Under (4).

The ACTING CHAIRMAN: There is no (b) under (4).

Mr. MURRAY: I am referring to section 58.

The ACTING CHAIRMAN: We are on section 55 now. Shall Section 55 (4) carry? Carried.

Section 56, certificate of registration rendered?
Carried.

Section 57, regulations.

57. The Governor in Council may make regulations

- (a) authorizing the Minister to grant licences to cut timber on surrendered lands, or, with the consent of the council of the band, on reserve lands.

Mr. BLACKMORE: Would the minister comment on that section?

Hon. Mr. HARRIS: Section 57. The Blackfoot Band of Alberta say if lands have not been sold under surrender agreement, then licences should not be granted without the consent of the band. They overlook the fact that this was land which had been surrendered. The Sarcee Indian Band of Alberta said we should have the consent of the majority of the electors of the band. Once again they are not realizing that these are surrendered lands. The president of the North American Indian Brotherhood wanted the penalty here increased to \$1,000 or three years instead of \$100 or three months. The Indian Association of Alberta made a recommendation with respect to the old section, amending it to read:

The Governor in Council may with the consent of a majority of the electors of the band.

It is inserted, as you will see, in subsection (a) which reads:

authorizing the minister to grant licences to cut timber on surrendered lands, or, with the consent of the council of the band, on reserve lands,

Mr. BLACKMORE: That little phrase, "with the consent of the council of the band" gave them the idea, I suppose, that you were dealing with land that had not been surrendered.

Hon. Mr. HARRIS: That is right.

The ACTING CHAIRMAN: Shall section 57 (a) carry?

Section 57, (b)?

Carried.

Section 57, (c)?

Carried.

Section 57, (d)?

Carried.

Section 57, (e)?

Carried.

Shall section 58, (1), uncultivated or unused lands, carry?

58. (1) Where land in a reserve is uncultivated or unused or remains uncultivated or unused for a period of two years, the Minister may, with the consent of the council of the band,

- (a) improve or cultivate such land and employ persons therefor, authorize and direct the expenditure of so much of the capital funds of the band as he considers necessary for such improvement or cultivation including the purchase of such stock, machinery or material or for the employment of such labour as the Minister considers necessary,

Mr. HATFIELD: Who improves and cultivates this land?

Mr. APPLEWHAITE: I think you have some representations on that?

Hon. Mr. HARRIS: When we do the work we have farm instructors and the like.

Mr. HATFIELD: Do you have farm instructors go on the reserves to teach the Indians how to cultivate land? Do you furnish them with any machinery?

Hon. Mr. HARRIS: We certainly do.

Mr. HATFIELD: Well, you do not do it in New Brunswick.

Hon. Mr. HARRIS: It may be that they grow potatoes down there without too much trouble.

Mr. HATFIELD: I know of reserves where a lot of young men came out of school—they have a very good school on their reserve—and after they came out of school last summer there was a lot of unemployment and many Indians were lying around there when they should have been growing their own vegetables to supply that reserve, but they did not have a garden, there was no one to instruct them. We tried to get some one in there; the priest in charge there tried to get some one to come in to instruct these boys. I took it up with the superintendent here and he promised to do something but there was nothing done about it. There was good land there; all that was wanted was some one to come and instruct the Indians and furnish them with a small tractor and they could have grown all their own vegetables.

Hon. Mr. HARRIS: As I said before, Mr. Hatfield, this is not an inquisition into the running of the department, this is an attempt to legislate.

Mr. HATFIELD: I know, I am just enquiring.

Hon. Mr. HARRIS: We will answer all these questions in time but we can assure you in the meantime that we do spend a lot of money on that type of work.

Mr. APPLEWHAITE: Was there anything in the conference or that came out of the conference that we should know about on this?

Hon. Mr. HARRIS: To begin with, section 58 has been recast very considerably from the similar section in bill 267, and there was a great deal of discussion about this section at the conference ending with agreement with it in every respect except for one delegate who did not wish to be regarded as opposed to it but who said something like this, that the agricultural instructors do things arbitrarily and do not pay too much attention to the band council. He admitted they worked on the farms, but the purpose here is to see that land which could be improved or which has been improved but has not been cultivated is put to better economic use.

Mr. GIBSON: You are going to provide the initiative with the consent of the band council?

Hon. Mr. HARRIS: Yes.

Mr. HATFIELD: Are the agricultural instructors Indians or white men?

Mr. MACKEY: They are nearly all white men.

Mr. HATFIELD: Why not send some of these bright Indian lads through agricultural college and have them act as instructors?

Mr. MACKEY: We do that. Where the student shows aptitude we are prepared to send him to an agricultural college, and in some cases this is being done at the present time. I do not think we have any farm instructors in the maritimes at the present time. The reserves in Nova Scotia, as you recall, were re-organized a few years ago and we extended the acreage by purchases at Kingsclear, and they are doing quite a bit there in the way of agriculture.

Mr. HATFIELD: The maritimes are in the same position with reference to Indians as with everyone else down there, they do not pay much attention to them.

Mr. MURRAY: May I ask if anything is being done, like what is being done on the Fraser river, in the Lillooet, for the extension of irrigation work in connection with this farm improvement program?

Mr. MacKAY: In British Columbia we have a special vote providing for irrigation. Something in the neighbourhood of \$20,000 or \$30,000 is spent yearly on irrigation works and the extension of irrigation in that province, and that includes the area of Lillooet.

Mr. MURRAY: Yes, I hear that very good work is being done in and around Fountain Ranch and that the Indians there make as much as \$400 an acre growing tomatoes and selling them to the canning plants; but there are many water sources there that could be harnessed for the Indians.

Mr. MacKAY: Of course, water in British Columbia is under control of the province and a great deal of it is already recorded, and I think it would be difficult to get any additional water in the Lillooet area?

Mr. MURRAY: I am afraid that in some cases private individuals are using water that rightfully belongs to the Indian. For instance, there is a corporation growing hops for the beer industry in British Columbia which uses large supplies of water out of a creek which primarily was the property of the Indians.

Mr. MacKAY: The province of British Columbia has a water Act and there is provision in the Act against using irrigation water that has not been recorded in the name of the individual.

Mr. BLACKMORE: It is fit that we give the Indian department a considerable amount of commendation for the work that has been done under the general policy which is envisaged in this section. There are just one or two comments I think I will make. As we go into the future it would be wiser to leave it for the department to make provision by spending money in addition to the money in the band funds where the expenditure of that money would greatly improve the capacity of the reserves to support the Indians, and the next thing is that it would be a wise thing, I believe, to safeguard very carefully the resources on the reserve. For example, in my area, an extensive project of breaking up the land and bringing it under crop has been engaged in. That is all to the good, and the work is being done very well and watched over carefully; but there is this; we have to look to the future because it may be that the virgin value of the soil will be taken out by what we call in the west land mining and so leave the soil in a measure impoverished as compared with what it was when we began.

Now, some measure should be adopted to see to it that through fertilization or wise use of crop rotation, including the planting of such crops as alfalfa or sweet clover the fertility of the soil is maintained and that there is no drifting such as has occurred in that area, all of which could easily destroy the value of the reserve. That is the great need. And a most exacting vigilance should be exercised with respect to wheat. Now, on this same reserve there are parcels of land which through a certain amount of careless management for which the department was not to blame have become infested with weeds—quite seriously. There are some weeds in that area which are exceedingly difficult to eradicate; in fact, with modern methods and understanding it seems impossible to eradicate them. Care should be exercised in this respect.

And in this connection, having said these things, I wish to commend the department highly for this kind of work. I think it fits in well with what Mr. Hatfield referred to a while ago that where it is possible to reafforest land on a reserve, it should be done. I believe that a wide scale policy of reafforestation should be entered into so that the Indians in the years to come may have a patrimony to enjoy.

Mr. APPLEWHAITE: Do you consider the section to be wide enough to include woods operations?

Hon. Mr. HARRIS: No. This has to do largely with agricultural pursuits. In that connection I want to assure Mr. Blackmore that where we lease the land we do everything necessary in the way of safeguards that we can think of with respect to the rotation of crops and matters of that kind. Both in connection with leased land and in connection with our own operation of land, we try to get the occupants of the land to study and apply the rules of good husbandry as they are practised in that community.

Mr. BLACKMORE: I wish to commend the department on the steps which have been taken in the last few years.

The ACTING CHAIRMAN: Section 58 (b).

58. (1) Where land in a reserve is uncultivated or unused or remains uncultivated or unused for a period of two years, the Minister may, with the consent of the council of the band,

- (a) improve or cultivate such land and employ persons therefor, authorize and direct the expenditure of so much of the capital funds of the band as he considers necessary for such improvement or cultivation including the purchase of such stock, machinery or material or for the employment of such labour as the Minister considers necessary.
- (b) where the land is in the lawful possession of any individual, grant a lease of such land for agricultural or grazing purposes or for any purpose that is for the benefit of the person in possession, and
- (c) where the land is not in the lawful possession of any individual, grant for the benefit of the band a lease of such land for agricultural or grazing purposes.

(2) Out of the proceeds derived from the improvement or cultivation of lands pursuant to paragraph (b) of subsection one, a reasonable rent shall be paid to the individual in lawful possession of the lands or any part thereof, and the remainder of the proceeds shall be placed to the credit of the band, but if improvements are made on the lands occupied by an individual, the Minister may deduct the value of such improvements from the rent payable to such individual under this subsection.

(3) The Minister may lease for the benefit of any Indian upon his application for that purpose, the land of which he is lawfully in possession without the land being surrendered.

(4) Notwithstanding anything in this Act, the Minister may, without a surrender

- (a) dispose of wild grass or dead or fallen timber,
- (b) with the consent of the council of the band, dispose of sand, gravel, clay and other non-metallic substances upon or under lands in a reserve, or, where such consent cannot be obtained without undue difficulty or delay, may issue temporary permits for the taking of sand, gravel, clay and other non-metallic substances upon or under lands in a reserve, renewable only with the consent of the council of the band,

and the proceeds of such transactions shall be credited to band funds or shall be divided between the band and the individual Indians in lawful possession of the lands in such shares as the Minister may determine.

Mr. HARKNESS: In cases where there are not band funds which could be used for the purchase of livestock, equipment, tractors and so forth, is there any provision for the purchase of these things by the department on a loan basis, or anything of that kind?

Hon. Mr. HARRIS: If you will leave that until we come to a later section, we will discuss it at that time.

Mr. HARKNESS: I think there should be some provision in the bill to look after that sort of thing because, even where band funds are exhausted, there has been, as you are probably aware, perhaps a disinclination on the part of the department to authorize the purchase of machinery, quite often on the ground that the Indians would not look after that machinery and that it would go to ruin in the course of a year or so. As a result of that disinclination to purchase machinery quite often agricultural developments which could have taken place have not taken place. Of course, I think there is no doubt that Indians do need a considerable amount of training in the use and operation of machinery and so forth. But I think we should be prepared to extend a certain amount of help to them with the ultimate objective, with the final objective of getting these people to a point where they can support themselves agriculturally.

Mr. MURRAY: The district I referred to in the last ten years has shown tremendous improvement among the Indians in regard to the cultivation of land, the handling of livestock and in the handling of power machinery of one kind or another. Formerly the Indians were very discouraged and they felt that they were more or less neglected. But today they have good outfits, good cars, and they are taking a keen interest in various agricultural activities. I understand they have a co-operative of their own under way down there, and I understand that a credit union has been formed among them. If this work can be carried on, I think it will be a fine example to the rest of the Indians in Canada. I am sure of that.

Mr. HATFIELD: When is this work going to be extended to the Maritime Provinces? I think you are getting everything out west.

Mr. BLACKMORE: Let me urge that the policy be adopted in the Maritimes with the utmost expediency.

Hon. Mr. HARRIS: I might say that there has been a comparable sum of money employed in the Maritimes to that which has been spent in other sections of Canada.

Mr. BLACKMORE: Mr. Chairman, in many cases there are waters on a reserve such as streams, lakes, and ponds. And it seems to me that the department would be thoroughly wise in making provision for hatching and stocking or re-stocking these various waters because Indians, above all, love to fish.

Mr. GIBSON: Who does not?

The CHAIRMAN: Who does not love to fish?

Mr. BLACKMORE: In many cases I am lead to believe that if hatcheries were set up for the purpose, in accordance with the most approved principles, fish could be put into those streams without too heavy an expense, merely to the benefit of the Indians.

The ACTING CHAIRMAN: Section 58 subsection (1)?
Carried.

Subsection (1) (a).
Carried.

Subsection (1) (b).
Carried.

Subsection (1) (c).
Carried.

Subsection (2), Distribution of proceeds.
Carried.

Subsection (3), Lease at request of occupant.
Carried.

Subsection (4) (a), Disposition of grass, timber, non-metallic substances, etc.

Mr. GIBSON: Why is no safeguard requested from the band in (a)? Is it because of the time element?

Hon. Mr. HARRIS: Yes. The dispersal feature in the summer months enters into it there.

Mr. GIBSON: Under (b), could there not be some temporary permit, let us say, for a six month period?

Mr. HARKNESS: In connection with subsection (3), I take it that a piece of land can be leased to a non-Indian and that apparently it can be done without the consent of the band?

Hon. Mr. HARRIS: That is right.

Mr. HARKNESS: Would not the result be that you might have a white man introduced to an Indian reserve possibly against the majority of the band's wishes? The band might think it an undesirable thing and it might lead to a great deal of difficulty.

Hon. Mr. HARRIS: There was a discussion about that at the conference, and while it would be fair to say that most of the discussion started off with the thought which you expressed, namely that a non-Indian should not be admitted to the reserve for any kind of occupancy, yet when they saw the reverse of it, namely that this land belonged to the Indian and that if he should be restricted in his use of it, he would not be getting the right in property that an ordinary person enjoys, then the conference concluded that they would rather insist on the right of the individual Indian than to assert the other position, that they did not want a non-Indian there.

As a matter of fact on practically every reserve represented at the conference there were instances of Indians who had leased, or wished to lease their lands to non-Indians. And it was the feeling of the conference I think, with one exception—that an Indian should be free to do that without any restraint by his band council.

The ACTING CHAIRMAN:

Now, subsection (4) (a).

Carried.

Subsection (4) (b).

Carried.

Section 59, Adjustment of contracts.

59. The Minister may, with the consent of the council of a band

- (a) reduce or adjust the amount payable to His Majesty in respect of a sale, lease or other disposition of surrendered lands or a lease or other disposition of lands in a reserve or the rate of interest payable thereon, and
- (b) reduce or adjust the amount payable to the band by an Indian in respect of a loan made to the Indian from band funds.

Mr. BLACKMORE: Would the minister kindly comment on that, please.

Hon. Mr. HARRIS: This section permits the minister to alter the terms of a contract for the sale of surrendered land, let us say, to reduce the price, if it should be necessary to do so, to obtain final payment, to alter the rate of interest after default or any of the normal things. Which a mortgage company might have to be adjusted, or matters dealt with having to do with trying to collect money.

The ACTING CHAIRMAN: Subsection (a).
Carried.

Subsection (b).
Carried.

Section 60.

60. (1) The Governor in Council may at the request of a band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable.

(2) The Governor in Council may at any time withdraw from a band a right conferred upon the band under subsection one.

Subsection (1) "G. in C. may grant to band control over lands."

Mr. HARKNESS: What is the purpose of this section, Mr. Chairman?

Mr. T. R. L. MACINNES (Secretary of the Indian Affairs Branch): The purpose of this section is to provide that where a band of Indians are sufficiently advanced and sufficiently organized they can take over the management of the reserve and the land in the reserve with virtually the same powers and authorities as are exercised by a rural municipality.

That is the general principle, but there are involved in it a number of complications, having regard to the municipal laws of the provinces, the question of this subject being within the jurisdiction of the provinces under the British North America Act, and the question of how land which is on an Indian reserve under the jurisdiction of the Dominion government could be set up in such a manner that the Indian council would act in a way similar to the reeve and town council, or to aldermen duly organized under provincial law in municipalities.

There is quite a bit of detail to be worked out, and I might say that the subject is being studied at the present time.

One has to bear in mind that when a band gets these powers, it would be able to purchase and take up gifts and bequests or otherwise own, hold, operate or dispose of property be it real or personal, including the power to purchase the interest of individual owners, to make loans for public projects, that is, to secure revenue by loans, giving the electors or members of the community the means of taxation and generally to carry on, in effect, as a municipality.

That is looking a long way ahead. But that is, as I understand it, the eventual goal of section 60.

The section is similar to section 58 with regard to revenue and funds. I think that Mr. Harkness will recall a discussion in the former joint committee of the Senate and the House of Commons looking forward to this objective. And this is an effort to embody in this legislation that objective as far as possible, having regard to the constitutional authority of the Dominion parliament. It is an attempt to carry out what the joint committee had in mind on this subject.

Mr. HARKNESS: It is generally an enabling clause, you might say, under which the Indian band council could be given more or less the powers of a municipal council?

Mr. MACINNES: Yes!

Mr. CHARLTON: Would they have the power to make by-laws?

Hon. Mr. HARRIS: There is a latter clause which deals with the power to make by-laws.

Mr. MURRAY: Do you have a credit union in mind there too? It is a very beneficent system in British Columbia, the credit union.

Hon. Mr. HARRIS: Anything at all which will help.

Mr. MURRAY: I think a special effort should be made to establish it.

Mr. HATFIELD: Would it not have to come under provincial law?

Mr. MACINNES: The problem is how it would come under provincial and municipal laws and at the same time remain on the Indian reserve.

Hon. Mr. HARRIS: There was some correspondence with respect to this section. The Indians of the Pas agreed to it. The president of the Homemakers' Club of Caughnawaga, Quebec, said that she thought this might cause trouble, but she did not give a reason.

The Sarcee Indian band thought that the request of the band should be obtained by two-thirds vote rather than by a straight majority.

The Indian Association of Alberta wanted to amend subsection (2) by inserting therein the following words:

"the Governor in Council may at any time under reasonable grounds, at the request of the majority of the electors of a band, . . ." and so on.

Mr. HATFIELD: I think that a two-thirds vote is a good idea.

The ACTING CHAIRMAN: Shall section 60 subsection (1) carry?

Mr. BLACKMORE: Would the minister have any objection to including a two-thirds vote?

Hon. Mr. HARRIS: To do so would be a departure from all the other principles we follow, namely, having a majority vote.

Mr. BLACKMORE: It seems to me that a two-thirds vote would be sound.

Hon. Mr. HARRIS: What we do not want to do, and what I think that would be doing would be this: surely we want the Indians to become adventurous rather than timid. So, if you say a two-thirds vote of the band would be required to take a forward step, you would in effect be restricting a chap who wants to do a job by requiring him to get a two-thirds vote of the people with him.

Mr. HATFIELD: But it would keep him out of trouble.

Mr. BLACKMORE: I recognize the virtue of what the minister has said. But you will recall that in many of our procedures we require a two-thirds vote. It is easy for people to be led away, or stampeded so to speak, with propaganda and to take action before they have had time to consider.

Mr. APPLEWHITE: Just thinking out loud, is there any valid reason why they should be unable to surrender their land on a majority vote while the power to manage land requires two-thirds?

Mr. BLACKMORE: That is why in my mind I think it should have been a two-thirds majority in order to surrender. It is only just a sound precaution in my opinion. In respect of that suggestion by the Alberta Indian Association for clause (2), has the minister any serious objection to putting that amendment in?

The ACTING CHAIRMAN: Well shall we carry the first subsection?

Mr. BLACKMORE: I would like to see a two-thirds majority there and I really would like to see a two-thirds majority all the way through the Act, because the Indians, making all allowances and judging from our experience with them, are just a little more inclined to be emotional than are whites.

Hon. Mr. HARRIS: Don't you want that emotional leaning on the side of governing their own affairs?

Mr. BLACKMORE: It is the emotionality of the Indian which causes him to accept hardship from people with whom he is dealing. It is lack of experience that enables emotion to carry him.

Mr. APPLEWHITE: That in the long run ensures that the wishes of the minority shall be effective.

Mr. CHARLTON: Would there not be the same difficulty on taking away rights. Then probably there should be a two-thirds vote, but in any rights when you are giving freedoms surely we should not add an extra stipulation.

The ACTING CHAIRMAN: Since this is a consideration which we have dealt with in most of the sections should you not carry this now? We have carried sections that did allow a majority vote all the way through. If you decide to do something different at the end you can go back and cover the whole Act. It would be a general consideration I would think, rather than on this particular clause. Others have been carried and we might as well be consistent.

Mr. BLACKMORE: This observation probably should be made. It is much more difficult for Indians generally, because of their lack of education, to get an accurate picture of what is proposed to them than it would be for a white man. That would give another reason why we should exercise care.

The ACTING CHAIRMAN: Well shall we carry section 60(1)?

Carried.

Section 60(2)?

Carried.

Section 61?

61. (1) Indian moneys shall be expended only for the benefit of the Indians or bands for whose use and benefit in common the moneys are received or held, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which Indian moneys are used or are to be used is for the use and benefit of the band.

(2) Interest upon Indian moneys held in the Consolidated Revenue Fund shall be allowed at a rate to be fixed from time to time by the Governor in Council.

Mr. BLACKMORE: Would the minister comment?

Hon. Mr. HARRIS: There are several representations here with respect to sections 61 to 68.

Mr. HATFIELD: What is the interest now paid on this money?

Hon. Mr. HARRIS: If you will come to the following sections we will discuss it.

The Indians of Fort Vermilion say that there should be more local direct control over their funds. The Indians of The Pas agreed with these sections. There are no other observations on 61(1).

With respect to 61(2) the Blackfoot and Sarcee bands state that we should amend it to read 5 per cent. The president of the North American Brotherhood and Indian Association of Alberta made similar representations. These representations were discussed at the conference and they all stated they would like to have the 5 per cent written into the statute.

Mr. GIBSON: So would I.

Hon. Mr. HARRIS: It was explained to them that it was not the intention of the government to write in any sum. I would not misrepresent their opinion and I think they would still like to see that written in.

Mr. HATFIELD: What is the present rate?

Hon. Mr. HARRIS: 5 per cent.

Mr. HARKNESS: Do they get that 5 per cent as a result of any statutory or treaty agreement?

Hon. Mr. HARRIS: No, it began at 5 per cent and there is an argument on record by the former superintendent general to show that despite the ups and

downs of the interest rate there should be some generosity in mind with respect to the needs of the Indian. That was the basis at one time I gather, when the discussion arose—whether it was in the investigating committee I am not sure now, but it was suggested that the rate might be continued.

Mr. HATFIELD: Is the same interest paid on band funds as on treaty money?

Hon. Mr. HARRIS: Treaty money is payable annually out of the consolidated revenue fund. The 5 per cent is interest on the \$20 million trust funds I spoke of a moment ago.

Mr. HARKNESS: I think the point here is that quite a large number of Indians have been under the impression, whether correct or not, that this 5 per cent was a more or less guaranteed-rate.

Hon. Mr. HARRIS: There was no suggestion at the conference that they understood it was guaranteed. They said it had obtained for a good many years and it should be continued.

Mr. BRYCE: Every Indian band fund gets 5 per cent?

Hon. Mr. HARRIS: All moneys that come into the consolidated revenue fund in trust for Indians earn 5 per cent.

Mr. HARKNESS: I think in view of the fact that these moneys which have been secured a long time ago—such as by the Blackfoot Indians through the sale of half their reserve back about 1900—that money at least should continue on the 5 per cent rate whether some lower rate is set for moneys secured from this date on or not. It seemed to me that was somewhat of a reasonable position because when they made the sales they were pretty well given to understand, I think, that the money would be put in the funds and would draw 5 per cent interest, giving them so much money on which to live. In other words, whilst there may have been no definite guarantee in connection with the thing in so far as the Indians were concerned that was their understanding of the deal. It would seem to me there is somewhat of a moral obligation to continue the 5 per cent payment on moneys which were secured by sales in the past while this was in operation. That would not apply to any moneys put in there from now on perhaps.

Hon. Mr. HARRIS: There have been many occasions in the past when the rate was lower than 5 per cent. You would not want to offset against the particular sale you mention the occasions when the money came in when the current rate was less than 5 per cent.

Mr. HARKNESS: I am not talking about the current rate, but the rate on the basis of which the sales were made.

Hon. Mr. HARRIS: What if a sale was made when the rate was 3 per cent?

Mr. HARKNESS: No, the sale was not made on the basis of the current rate of interest, it was made on the basis that they were going to receive 5 per cent on the money.

Hon. Mr. HARRIS: Where any understanding of that kind was reached it would be borne in mind.

Mr. BLACKMORE: I believe the department would be wise in aiming to keep up that 5 per cent rate.

Mr. BRYCE: Do you not think it was a Scotsman who made the deal for them?

Mr. BLACKMORE: If a Scotsman did it it is all to their credit.

The ACTING CHAIRMAN: Shall 61 (1) carry?

Carried.

Section 61 (2)?

Carried.

Section 62.

62. All Indian moneys derived from the sale of surrendered lands or the sale of capital assets of a band shall be deemed to be capital moneys of the band and all Indian moneys other than capital moneys shall be deemed to be revenue moneys of the band.

Mr. GIBSON: Is matured timber considered to be capital?

Mr. MACKEY: Timber of all kinds—anything that is sold; of commercial value.

Mr. HARKNESS: All oil would be capital, or moneys secured from the sale of oil rights would be capital?

Mr. MACKEY: No, leases and permits are put into the revenue division of the account. I imagine though if an oil well is brought in the production would be considered as capital.

Mr. HARKNESS: The 12½ per cent royalty would be considered as revenue?

Mr. MACKEY: No, as capital.

Mr. HARKNESS: I should think it would be capital; that is why I brought the question up.

Mr. MACKEY: I was thinking of the leases of the lands under permit. The returns from that would be revenue.

Mr. MURRAY: What is the revenue now received from oil?

Hon. Mr. HARRIS: About \$½ million last year.

Mr. MURRAY: Is that from natural gas?

Hon. Mr. HARRIS: All kinds.

Mr. MURRAY: On the royalty basis of 12½ per cent?

Mr. MACKEY: It is mainly from lease fees and permit fees. There is only one producing oil well on an Indian reserve.

Mr. MURRAY: How much do the Indians receive on that?

Mr. MACKEY: 12½ per cent.

Mr. MURRAY: Where is it?

Mr. MACKEY: In Alberta on the Stony-Sarcee—

Mr. MURRAY: Are there any reserves in British Columbia which are being explored or drilled for oil?

Mr. MACKEY: There are some under lease, some in the upper Fraser Valley, and some I believe in the northern sections of the Caribou.

Mr. MURRAY: Some in the Quesnel area?

Mr. MACKEY: Yes.

Mr. MURRAY: They have reached oil there—

Mr. BLACKMORE: Is there any difference between the \$20 million and the band funds which are held on the individual reserves or does this \$20 million include the band funds?

Hon. Mr. HARRIS: The \$20 million is the money we have here in trust funds.

Mr. BLACKMORE: That is capital?

Hon. Mr. HARRIS: No, it is revenue as well.

Mr. BLACKMORE: Does it include band funds of the various reserves?

Hon. Mr. HARRIS: It includes the band funds as we know them.

Mr. WOOD: Is each band fund in the \$20 million earmarked for that band?

Hon. Mr. HARRIS: Oh, yes.

Mr. MACKEY: There are 600 separate or special accounts.

The ACTING CHAIRMAN: Shall section 62 carry?
Carried.

Section 63?

63. Notwithstanding *The Consolidated Revenue and Audit Act, 1931*, where moneys to which an Indian is entitled are paid to a superintendent under any lease or agreement made under this Act, the superintendent may pay the moneys to the Indian.

Mr. BLACKMORE: Would the minister comment?

Hon. Mr. HARRIS: The Indian Association of Alberta, and the Sarcee Indians are opposed to this, which was one amendment made to the present Act that everybody wanted. I do not know what happened to the association that they took opposition but they indicated their opposition to 63 lies in part to their opposition to the allotment of land and I have not been able to follow the connection between the two.

Mr. BLACKMORE: The minister believes this clause is important?

Hon. Mr. HARRIS: It was subject to more complaints than almost anything except the one I indicated the other day to Mr. Hatfield. There were long delays and the money collected by the local agent on behalf of the Indians had to be remitted to the consolidated revenue fund, and then there had to be an order in council passed here to get it out of the consolidated revenue fund and back to the Indians. It was something that in many cases took months. They thought we should short circuit the procedure and allow the superintendent to pay the Indian on the spot.

Mr. GIBSON: That was the recommendation of the committee was it not?

Hon. Mr. HARRIS: Yes.

The ACTING CHAIRMAN: Shall section 63 carry?
Carried.

Section 64?

64. With the consent of the council of a band, the Minister may authorize and direct the expenditure of capital moneys of the band

- (a) to distribute *per capita* to the members of the band an amount not exceeding fifty per cent of the capital moneys of the band derived from the sale of surrendered lands,
- (b) to construct and maintain roads, bridges, ditches and water courses on the reserves or on surrendered lands,
- (c) to construct and maintain outer boundary fences on reserves,
- (d) to purchase land for use by the band as a reserve or as an addition to a reserve,
- (e) to purchase for the band the interest of a member of the band in lands on a reserve,
- (f) to purchase livestock and farm implements, farm equipment, or machinery for the band,
- (g) to construct and maintain on or in connection with a reserve such permanent improvements or works as in the opinion of the Minister will be of permanent value to the band or will constitute a capital investment.
- (h) to make to members of the band, for the purpose of promoting the welfare of the band, loans not exceeding one-half of the total value of
 - (i) the chattels owned by the borrower, and
 - (ii) the land with respect to which he holds or is eligible to receive a Certificate of Possession,
 and may charge interest and take security therefor,

- (i) to meet expenses necessarily incidental to the management of lands on a reserve, surrendered lands and any band property, and
- (j) for any other purpose that in the opinion of the Minister is for the benefit of the band.

Mr. SIMMONS: Under this section 64 does this entitle the minister to use capital funds of a wealthy band for medical care?

Hon. Mr. HARRIS: To spend money for medical care? Well, we have a provision later—

Mr. SIMMONS: That is under "interest", the next one?

Hon. Mr. HARRIS: You will find there are sections dealing with medical matters towards the end.

Mr. HATFIELD: Are you allowed to spend money without the authorization of the band?

Hon. Mr. HARRIS: No, you will find section 64 contains the words, "with the consent of the council band".

Mr. GIBSON: Do they have to initiate it, or does the minister initiate the idea?

Hon. Mr. HARRIS: We both initiate it.

Mr. GIBSON: Oh, I see, it is a matter of mutuality?

Hon. Mr. HARRIS: Yes.

Mr. HATFIELD: I understood there was \$10,000 taken out of band funds of one of our Indian reserves in New Brunswick and used as an expenditure for water works without the consent of the band; is that so?

Hon. Mr. HARRIS: The minister had more authority to spend the Indians money under the old Act than he will have if you passed this section. This section gives more power to the band council.

Mr. HATFIELD: Yes.

Hon. Mr. HARRIS: Let me, however, point out that on page 5, section 25 of the report of the conference there is a comment on this section:

With respect to section 64 (a) dealing with the expenditure of capital moneys with consent of the Band Council, two representatives were opposed to this section if it were possible for successive per capita distributions to be made. They were of the opinion that only the per capita amount set out in a surrender should be paid to the members of the band and that the remaining amount should remain as capital funds forever. Other representatives, however, favoured subsequent capital distribution.

Mr. HATFIELD: In other words, a majority has to be in favour?

Hon. Mr. HARRIS: Yes.

The ACTING CHAIRMAN: Shall (a) carry?

Carried.

Section (b)?

Carried.

Mr. SIMMONS: Suppose a band wanted to build a hospital on their reserve, would this section apply to them?

Hon. Mr. HARRIS: That is taken care of by the Department of National Health and Welfare.

Mr. SIMMONS: I see, thank you.

The ACTING CHAIRMAN: Shall subsection (b) carry?

Carried.

Subsection (c)?

Mr. MURRAY: That would be a very costly procedure.

Mr. GIBSON: It can only be done with the consent of the band.

Mr. MURRAY: It will mean the building of hundreds and hundreds of miles of boundary fences.

Hon. Mr. HARRIS: It does not say you must do it.

Mr. MURRAY: Oh, there is the provision though that you may do it?

Hon. Mr. HARRIS: Right.

The ACTING CHAIRMAN: Subsection (c)?

Carried.

Subsection (d)?

Carried.

Subsection (e)?

Carried.

Subsection (f)?

Carried.

Subsection (g)?

Carried.

Subsection (h)?

Carried.

Subsection (i)?

Carried.

Subsection (j)?

Carried.

Section 65: expenditure of capital.

65. The Minister may pay from capital moneys

(a) compensation to an Indian in an amount that is determined in accordance with this Act to be payable to him in respect of land compulsorily taken from him for band purposes, and

(b) expenses incurred to prevent or suppress grass or forest fires or to protect the property of Indians in cases of emergency.

Mr. BLACKMORE: Before we leave section 64; I think it would be wise on the part of the department to look forward to the time when money should be appropriated to supplement the money obtained from band funds probably on a dollar for dollar basis.

Hon. Mr. HARRIS: We do that often.

The ACTING CHAIRMAN: Section 65, capital expenditure—shall subsection (a) carry?

Mr. BLACKMORE: Would the minister discuss this briefly?

Hon. Mr. HARRIS: I have no comments on this particularly, other than to say that there was some discussion in respect to compensation.

Mr. BLACKMORE: The conference approved of it?

Hon. Mr. HARRIS: Yes.

Mr. GIBSON: Are you leaving it subject to the provision which applies to white people; I mean, Indians can be impressed to fight fires?

Mr. MacKAY: Yes, they can be impressed into service for the purpose of fighting fire the same as the white man can be under the provincial forestry Act. They have been drafted on occasion for the purpose of fighting fires.

Mr. MURRAY: Well, Mr. Chairman, it is sometimes different with the Indian than it is with the white man; there are often occasions when the Indian sets the fire purposely in order to make green pasture for his cattle.

The ACTING CHAIRMAN: A lot of white people do that too.

Mr. SIMMONS: I think someone has said that the Indians are great conservationists.

The ACTING CHAIRMAN: Shall 65 (a) carry?

Carried.

Subsection (b)?

Carried.

Mr. ASHBOURNE: Generally speaking is there any fire protection equipment provided in these areas—any equipment with which to fight fires.

Mr. MacKAY: We have an understanding with respect to all fires on Indian reserves—fires which originate there—that the Indians will fight them. This is one of the cases where there is a charge for the fire fighting service and then there is an apportionment of the cost involved with respect to this protection. It would be a very expensive thing for the Department of Indian Affairs to maintain fire fighting service on all the reserves all over Canada, and we take advantage of the offer of the provinces to undertake the matter of fire control under which the local fire fighting service is available to the Indians, and that we then apportion the amount of cost involved.

The ACTING CHAIRMAN: Shall subsection (b) carry?

Carried.

Section 66:

66. (1) With the consent of the council of a band, the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in his opinion will promote the general progress and welfare of the band or any member of the band.

(2) The Minister may make expenditures out of the revenue moneys of the band to assist sick, disabled, aged or destitute Indians of the band and to provide for the burial of deceased indigent members of the band.

(3) The Governor in Council may authorize the expenditure of revenue moneys of the band for all or any of the following purposes, namely,

- (a) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves,
- (b) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable,
- (c) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof,
- (d) to prevent overcrowding of premises on reserves used as dwellings,
- (e) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves, and
- (f) for the construction and maintenance of boundary fences.

Mr. BLACKMORE: Will the minister comment on this?

Hon. Mr. HARRIS: Section 66 was in quite different form than in bill 267. We removed the old subsection (2) which met with a great deal of opposition. Then, with regard to subsection (3) in the old Act, which is now subsection (2), there was one objection to that by the Queen Victoria Treaty Protective Associa-

tion, that they should not be under obligation to maintain their sick, disabled, aged or destitute; and then, at the conference, this came up for discussion; and you will see on page 5, paragraph 26, it says:

Section 66 (2) providing for the expenditure of money without consent for the sick, disabled, etc., was generally approved but some representatives were of the opinion that the expenditure of band funds for this purpose was not proper but should be made from public moneys. and, paragraph 27:

Similarly, with respect to section 66 (3) (b) regarding the expenditure of band funds for the prevention and control of diseases on reserves, one representative stated that band funds should not be used for this purpose on the grounds that the Department of National Health and Welfare were providing health services to Indians at the present time.

The opinion was just as I have stated, a minority opinion of one or two in each case.

Mr. GIBSON: Are charges on this account made against the band funds? Do they come out of the revenue from their funds?

Mr. MACKEY: That depends on the extent of the fund; if the band has a considerable fund a portion of a charge of this kind is met out of the revenue from such funds.

Mr. GIBSON: Is that an arbitrary decision by the Department of Indian Affairs?

Mr. MACKEY: Well, if, as I said before, the band has not much in the way of funds it is not charged but paid by the department, but in cases where the bands have funds it is the view of the department that a proportion of the charge should be met from such band funds.

Mr. GIBSON: Well, then, if one band had more money, or more revenue than others, would that not mean that they would have a higher standard of living?

Mr. MACKEY: No, there is a basic, a minimum set.

Mr. GIBSON: I am just wondering. Health and welfare benefits under normal conditions would be provided to white people by the provincial government, you see—when you are speaking of sanitation and that type of thing.

Mr. MACKEY: Yes. In the matter of the use of money for the band it is usual for us to secure the revenue from the council of the band.

Mr. BLACKMORE: I see it is nearly six o'clock, Mr. Chairman? I have a number of questions I would like to ask about this part of the bill but I am afraid it would not be possible for me to complete them before six o'clock. I suggest that you call it six o'clock.

The ACTING CHAIRMAN: If that is agreeable, all right.

(Discussion as to sittings followed)

The ACTING CHAIRMAN: We will meet again on Monday next, at 11 o'clock a.m.

The committee adjourned to meet again Monday, April 23, 1951, at 11 o'clock a.m.

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Bill No. 79
Indian, Special Committee
1951

SESSION 1951

HOUSE OF COMMONS

100-1000

SPECIAL COMMITTEE

APPOINTED TO CONSIDER

BILL No. 79

AN ACT RESPECTING INDIANS

CHAIRMAN—MR. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

MONDAY, APRIL 23, 1951

WITNESSES:

Hon. W. E. Harris, Minister of Citizenship and Immigration.

Mr. D. M. MacKay, Director, Indian Affairs Branch.

Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch.

Mr. H. M. Jones, Superintendent, Welfare Service, Indian Affairs Branch.

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1951

MINUTES OF PROCEEDINGS

MONDAY, April 23, 1951.

The Special Committee appointed to consider Bill No. 79, An Act respecting Indians, met at 11 a.m. this day. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Applewhaite, Ashbourne, Blackmore, Boucher, Brown, (*Essex West*), Bryce, Charlton, Gibson, Harkness, Hatfield, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Noseworthy, Richard (*Gloucester*), Simmons, Welbourn, Whiteside, Wood.

In attendance: Hon. W. E. Harris, Minister of Citizenship and Immigration; Mr. D. M. MacKay, Director, Mr. T. R. L. MacInnes, Secretary, and Mr. H. M. Jones, Superintendent of Welfare Service, Indian Affairs Branch.

A number of letters were read and referred to the Clerk of the Committee for acknowledgment.

The Committee resumed consideration of Bill No. 79, An Act respecting Indians:

Clauses 66 to 69 inclusive, were adopted;

Clause 70, sub-clause (1) was adopted and sub-clause (2) allowed to stand;

Clauses 71 to 76 inclusive were adopted;

Clause 72; sub-clauses (1), (3) and (4) were adopted and sub-clause (2) was allowed to stand;

Clause 78 was allowed to stand;

Clauses 71 to 76 inclusive, were adopted;

Clause 86; sub-clause (1) was adopted and sub-clause (2) allowed to stand;

Clause 87 was adopted.

At 1 p.m. the Committee adjourned to meet again on Tuesday, April 24, at 11 a.m.

E. W. INNES,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
APRIL 23, 1951.

The Special Committee appointed to consider the Indian Act met this day at 11.00 a.m. The Chairman, Mr. D. F. Brown, presided.

The CHAIRMAN: Gentlemen, let us come to order. It may be that you have received some communications in connection with the work of the committee.

I have before me a letter from the Co-ordinating Committee of the Canadian Youth Groups, Hart House, University of Toronto, in connection with the Act now presented. If it is your wish, I shall turn this over to the clerk for acknowledgment.

It may be that you have other communications that you would like to have turned over as well.

I have another one from the Indian Association of Alberta, dealing with various sections of the Act which is now before us. Some of the sections referred to have been dealt with. Others can be considered as we reach the clauses. The clerk will acknowledge them.

I have also a communication here from Harvey J. Bell of North Battleford, Sask. It was received on April 10, 1950. The committee was not organized at that time. Probably it will be acknowledged later by the committee.

I have a letter here addressed to Mr. J. W. Noseworthy, M.P., from James Montour and Simon K. Simon, dated April 9, 1951.

I have a letter from the Association for Civil Liberties of Toronto which is dated April 10, 1951, referring to the Act. We will consider it at a later date.

Are there any other communications? If not, we shall get down to section 66.

66. (1) With the consent of the council of a band, the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in his opinion will promote the general progress and welfare of the band or any member of the band.

(2) The Minister may make expenditures out of the revenue moneys of the band to assist sick, disabled, aged or destitute Indians of the band and to provide for the burial of deceased indigent members of the band.

(3) The Governor in Council may authorize the expenditure of revenue moneys of the band for all or any of the following purposes, namely,

- (a) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves,
- (b) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable,
- (c) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof,
- (d) to prevent overcrowding of premises on reserves used as dwellings,
- (e) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves, and
- (f) for the construction and maintenance of boundary fences.

Subsection (1), Expenditure of revenue moneys with consent of band.

Carried.

Subsection (2), Minister may direct expendiutre.

Mr. HARKNESS: On that subsection (2), Mr. Chairman, I understand that the Alberta Indians made some representations, did they not, to the effect that the expenditures under that subsection should come from public funds except where there was enough money in the revenue funds of the band to allow them to pay, in addition to the \$25 a month presently being paid, a sum which was equal to the amount paid by the province or municipality in the matter of relief, to bring the Indians up to somewhere near the scale of the old age pension which is presently paid?

Hon. Mr. HARRIS: Their representation is contained in a letter which just came to me in the mails by way of a copy of a letter which was addressed to the Chairman.

The CHAIRMAN: The letter was dated April 20, 1951.

... Clause 66 (2): there should be two changes here. It should be amended to read, "with the consent of the council of the band," and secondly, the word "aged" should be removed since care for the aged and destitute is a governmental responsibility.

Hon. Mr. HARRIS: I commented on it the other day.

The CHAIRMAN: Subsection (2)?

Mr. HARKNESS: It all comes down to the matter of old age pensions, does it not?

Hon. Mr. HARRIS: I think they feel that since the government is now paying a reasonable rate of allowance there should be no charge on the band funds for the maintenance of the aged. But we cannot agree with that. There is a responsibility in the band to take care of their aged, destitute, and sick people along with governmental assistance as well.

Mr. MURRAY: Well, how do you square that with family allowances?

Hon. Mr. HARRIS: We do pay them family allowances.

Mr. MURRAY: Out of Indian funds?

Hon. Mr. HARRIS: No, out of the consolidated revenue. Indian children receive family allowances on precisely the same basis as do non-Indians.

Mr. MURRAY: Don't you think that the old age pension could be applied similarly?

Hon. Mr. HARRIS: We do. We give them \$25 a month.

Mr. CHARLTON: It is still not the equivalent of what is paid right across Canada.

Hon. Mr. HARRIS: I do not think you can prove that by any statistics that you could present here. It is equivalent to what the government pays by way of Indian allowances. Of course, it is true that the provinces do not contribute. But you and I are not concerned about that.

Mr. BRYCE: This \$25 which is being paid to the Indians, does it come out of the band fund?

Hon. Mr. HARRIS: No.

Mr. BRYCE: Then it comes out of the consolidated revenue fund?

Hon. Mr. HARRIS: It comes out of the estimates of this department.

Mr. BRYCE: Have you any statistics to show how many are getting the \$25?

Hon. Mr. HARRIS: Yes. If you feel that you want to go into the whole question now, we can do that.

Mr. BRYCE: Oh, I do not want it now. But you can tell us later how many are getting the \$25 or \$15 and so on.

Hon. Mr. HARRIS: I thought I would deal with that when the estimates were dealt with in the House.

Mr. BRYCE: But that is a long time away.

Mr. RICHARD: You say that family allowances and old age pensions are being paid out of the general revenue?

Hon. Mr. HARRIS: That is right.

Mr. HARKNESS: But I still say that the Indians are not on the same basis as the rest of the population so far as old age pensions are concerned.

Hon. Mr. HARRIS: You mean that the provinces do not contribute?

Mr. HARKNESS: Yes, but apart from whether provinces contribute, I say they are not on the same basis. When we are making this new Act, why should not the aged Indians be placed on the same basis, quite apart from the provincial contributions, as white people throughout Canada? Then, when and if there are band funds sufficient to equal the provincial contribution, payments could be made out of band funds.

Hon. Mr. HARRIS: In what respect do you think that the aged Indian is not in as favoured a position as the non-Indian?

Mr. HARKNESS: He gets \$25 a month.

Hon. Mr. HARRIS: And he also gets free medical care.

Mr. HARKNESS: But he is entitled to that medical care anyway.

Hon. Mr. HARRIS: But you do not get it, Mr. Harkness.

Mr. HARKNESS: The ordinary white person gets at the present time \$40 a month and \$50 in case of necessity.

Hon. Mr. HARRIS: He only gets \$30 from the federal government.

Mr. APPLEWHAITE: Were any payments contemplated under this subsection, they would not be in lieu of the \$25, they would be in addition to it or in cases where \$25 is not paid.

Mr. BRYCE: But he is entitled to medical attention, whether or not he be an old age pensioner. He has it by right as a treaty Indian. So you are not giving him anything extra when you add that on to his old age pension.

Hon. Mr. HARRIS: I did not get what you said. I am sorry.

Mr. BRYCE: You give medical attention to the Indian. He does not need to be 70 years of age to get that medical attention. He has it now. Supposing he is only 25 years of age. If he is a treaty Indian, he gets it. So when it comes to the Indians and the old age pension, whatever he gets, be it \$25, or \$20 and so on, when you say that he gets medical attention which is something that we do not get—we have \$40—the Indian is entitled to it anyway. So you are not giving him anything at all extra.

Hon. Mr. HARRIS: Well, that is a matter of argument. First of all, as you know, not more than one-half of the Indians in Canada are under treaty. Then, with respect to those who are, it is not agreed generally that all the medical treatment and care that we give the Indian is pursuant to treaty. I do not think anybody has argued that seriously.

It is true that under certain treaties the Indians are entitled to certain medical care, but I never heard anyone seriously contend that they are entitled to the medical care which they are getting now as a consequence of a treaty.

Mr. BRYCE: I think that the Hon. Paul Martin will assure you that they are doing it for the Indians by right.

Hon. Mr. HARRIS: I suggest that you go and talk to him, then.

Mr. MURRAY: Do you not think that Indians over 70 years of age should be given the old age pension the same as non-Indians?

Hon. Mr. HARRIS: How can you do that without an agreement with the provinces?

Mr. MURRAY: Well, though he is an Indian he is a citizen just as you are.

Hon. Mr. HARRIS: Will you please answer my question.

Mr. MURRAY: You cannot make provisions along a certain line and pay family allowances.

Mr. HARKNESS: You can give him the same payment that you make to a white person. Then if the band funds are sufficient to make a payment over and above the original contribution, they can do so. But if they cannot do so, then the Indian is at least better off than under the present situation.

All you are saying is that they are provided with free medical attention and that therefore \$25 is equivalent to the amount. You might just as well say that because Indians receive free medical treatment therefore they should not have the same children's allowances that white people receive. But nobody has ever put forward that argument. There is no question that Indian children are paid the same family allowances as white children. Therefore I say that Indians should receive the same old age pension as white people.

Hon. Mr. HARRIS: There is this difference though. When I announced the increase from \$8 to \$25 per month, I said in my announcement that that was taking into account the medical care which we thought was equivalent to the \$30 payment made by this government towards aged allowances.

Mr. GIBSON: An Indian always has his home. That is one of the big problems in connection with old age pensioners today, the problem of providing a roof over their heads.

Mr. BRYCE: But a lot of Indians I have seen never had a home.

Mr. GIBSON: Well, a home?

Mr. BRYCE: Well, a roof. Do you call that a home?

Mr. MURRAY: They move about a good deal in our part of the province.

The CHAIRMAN: Subsection (2)

Mr. CHARLTON: Is this medical care extended to all Indians?

Hon. Mr. HARRIS: To all Indians.

The CHAIRMAN: Subsection (2)

Carried.

Subsection (3) "Expenditure of revenue moneys with authority of G. in C."

Mr. HARKNESS: Mr. Chairman, I would refer now to section 64 where the consent of the council of the band was required in connection with a lot of other things. In this case it says the Governor in Council. Why is not the consent of the band provided for here the same as in section 64?

Hon. Mr. HARRIS: In section 64 we are dealing with capital moneys, and in section 66 we are dealing with revenue moneys. Then, in section 66 subsection (1) there is general authority given to the minister to expend money with the consent of the council for certain purposes. In subsection (2) the minister may expend money for certain—I would suggest—quite obvious responsibilities of the band without the consent of the band. Then in subsection (3) there are other forms of expenditure which it is felt should be undertaken in the interests of the band. But because of their nature, we felt that the Governor in Council should accept responsibility for these expenditures rather than the band council or the minister.

Mr. APPLEWHITE: I would like to see that subsection left in. The band might not be willing for the expenditure to be made. It might be something which was absolutely essential but there might not be any more money.

Mr. HARKNESS: Exactly. The same thing applies to some municipalities in connection with the matter of the controlling noxious weeds and so forth.

Hon. Mr. HARRIS: That is true.

Mr. HARKNESS: If we are going to attempt to treat Indians as far as possible like white men, we should train them to look after their own interests. I think you should not except these things from control of the band council.

Mr. APPLEWHAITE: I think Mr. Harkness has proved his case. If you do not take the weeds from your property, then the government will do it for you and charge the expense up to that property.

The CHAIRMAN: That is right.

Mr. MURRAY: I would like to see the money placed in the hands of the Indians instead of in the hands of the traders. I know that in many places scrip is given certain groups to take to the store to purchase certain supplies.

The CHAIRMAN: But has that got anything to do with this section, Mr. Murray?

Mr. MURRAY: Well probably I am under the wrong section.

The CHAIRMAN: Let us deal with this section. Subsection (3).

Carried.

Section 67

Subsection (1) "Maintenance of dependents."

Carried.

Subsection (2) "Maintenance of illegitimate child."

Carried.

Subsection (3) "Illegitimate children."

Carried.

Section 68

68. (1) The Governor in Council may by order permit a band to control, manage and expend in whole or in part its revenue moneys and may amend or revoke any such order.

(2) The Governor in Council may make regulations to give effect to subsection one and may declare therein the extent to which this Act and *The Consolidated Revenue and Audit Act, 1931*, shall not apply to a band to which an order made under subsection one applies.

Subsection (1) "Management of revenue moneys by band."

Mr. BLACKMORE: Would the minister kindly make a statement about this.

Hon. Mr. HARRIS: There were no comments from anyone on this section. But at the conference there was a comment. They felt that the Governor in Council should, wherever possible, turn over the management of revenue moneys to the band council. This section will do that and it will give authority. Therefore it will not be necessary for the minister and the Governor in Council to exercise some of the authority which is referred to in section 66.

Subsection (2) "Regulations."

Carried.

Section 69. "Loans to Indians."

69. (1) The Minister of Finance may from time to time advance to the Minister out of the Consolidated Revenue Fund such sums of money as the Minister may require to enable him

(a) to make loans to bands, groups of Indians or individual Indians for the purchase of farm implements, machinery, livestock, motor vehicles, fishing equipment, seed grain, fencing materials, materials to be used in native handicrafts, any other equipment, and gasoline and other petroleum products, or for the making of repairs or the payment of wages, or

(b) to expend or to lend money for the carrying out of co-operative projects on behalf of Indians.

(2) The Governor in Council may make regulations to give effect to subsection one.

(3) Expenditures that are made under subsection one shall be accounted for in the same manner as public moneys.

(4) The Minister shall pay to the Minister of Finance all moneys that he receives from bands, groups of Indians or individual Indians by way of repayment of loans made under subsection one.

(5) The total amount of outstanding advances to the Minister under this section shall not at any one time exceed three hundred and fifty thousand dollars.

(6) The Minister shall within fifteen days after the termination of each fiscal year or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session thereof, lay before Parliament a report setting out the total number and amount of loans made under subsection one during that year.

Mr. BLACKMORE: Would the minister please make some comment here?

Hon. Mr. HARRIS: Originally the section had a more restricted list of projects for which loans could be made. This section extended that and provided for the same kind of proceedings, in accordance with the regulations made by the Minister of Finance and that the revolving fund should not exceed \$350,000.

The CHAIRMAN: Subsection (1).

Carried.

Mr. HARKNESS: To what extent has this section been made use of?

Hon. Mr. HARRIS: There is about \$100,000 outstanding and we have given instructions to the agents to bear this section in mind, that this fund is intended to be used for the benefit of the Indians, and that where proper it should be made use of for both band and individual purposes.

Mr. HARKNESS: I do not think it was made use of as much as it could have been. I was hoping that your instructions would result in considerably more use being made of it.

The CHAIRMAN: Shall subsection (1) carry?

Carried.

Mr. APPLEWHAITE: I understand that the Auditor General when he gave evidence before the Public Accounts committee said there was a provision whereby the minister could not advance more than \$100,000 in any one year. Is that regulation made pursuant to subsection (2), or is there statutory authority for it?

Hon. Mr. HARRIS: It is made under the regulation.

Mr. WOOD: With respect to the loans you speak of, are they actually loans or grants?

Hon. Mr. HARRIS: They are loans.

Mr. WOOD: You do get something back from them?

Hon. Mr. HARRIS: Oh, yes.

Mr. BLACKMORE: I wonder if the minister could tell us to what extent he has had any expenditure in regard to this matter. Has he lost money?

The CHAIRMAN: Is not that rather a matter for the estimates?

Mr. BLACKMORE: Well, I thought that since we were at this point, we might hear about it now.

Hon. Mr. HARRIS: I would not want to go into the details. I would not say that the loans have not to a great extent been repaid. The recent loans have not been very large so that is why we have said to the agents: "Make use of those funds."

Mr. MURRAY: How is your livestock investment coming along? Has it turned out well?

Hon. Mr. HARRIS: I do not think anyone could go wrong in livestock at the present time.

Mr. MURRAY: I think it is very important that they should be provided with a good grade of stock. I understand that many of them have been getting pure bred bulls.

Hon. Mr. HARRIS: That is right.

The CHAIRMAN: Subsection (1).

Carried.

Subsection (2) "Regulations."

Carried.

Subsection (3) "Accounting."

Carried.

Subsection (4) "Repayment."

Carried.

Subsection (5) "Limitation."

Carried.

Mr. CHARLTON: What is the total amount in any one year which has been taken?

Hon. Mr. HARRIS: I would have to get that for you.

The CHAIRMAN: Subsection (6), Report to parliament.

Mr. BLACKMORE: I wonder if the meaning of subsection (5) would be that the minister, in order to exceed \$350,000, would have to come to parliament for an amendment to the Act?

Hon. Mr. HARRIS: Yes, he would.

Mr. BLACKMORE: It impressed me with being a very small amount of money when you consider the tremendous number of possibilities. I think the minister would be justified in asking for a much greater authority than that.

Hon. Mr. HARRIS: When we have had time to look at the administrative features of it, if we find anything needs amendment, I shall bring it forward.

The CHAIRMAN: Subsection (6).

Carried.

Section 70, farms.

70. (1) The Minister may operate farms on reserves and may employ such persons as he considers necessary to instruct Indians in farming and may purchase and distribute without charge, pure seed to Indian farmers.

(2) The Minister may apply any profits that result from the operation of farms on reserves to extend farming operations on the reserves or to make loans to Indians to enable them to engage in farming or other agricultural operations or he may apply such profits in any way that he considers to be desirable to promote the progress and development of Indians.

Subsection (1), minister may operate farms.

Mr. BLACKMORE: Would the minister make a comment about that?

Hon. Mr. HARRIS: As I indicated the other day, there was one delegate, Mr. Tootoosis, who objected to this; that if the band did not want a farm instructor and did not want farming operation on their reserve, they need not have it. Otherwise there was no comment.

Mr. APPLEWHAITE: At whose expense?

Hon. Mr. HARRIS: At the expense of the consolidated revenue fund.

Mr. WHITESIDE: Were not representations made for Prairie Farm Assistance?

Hon. Mr. HARRIS: Yes. Representations were made that the Prairie Farm Assistance Act should be extended to the Indians on a reserve. But up to this moment there has been no progress made in determining whether or not that would be advantageous to the Indians or whether it could be done. That is one of the problems which was drawn to our attention last year and which we shall try to solve when we get through with this bill.

Mr. BLACKMORE: Did Mr. Tootoosis indicate any example on which he based his opinion? Did he mention the establishment of a farm in the reserve in Saskatchewan?

Mr. MACKEY: There are departmental farms in Saskatchewan and, as a matter of fact, in some of the other provinces. But they have not always been successful from the point of view of operations. Some Indians are dependent too largely on the band for assistance. But we do continue this type of assistance where the circumstances indicate that it should be extended.

Mr. BLACKMORE: The impression I gather from the wording of section 70 is that the government would operate these farms, and that it is just an experimental type of farming; consequently the Indians would have hardly any responsibility in connection with them. Is that not correct?

Hon. Mr. HARRIS: That is right. We do operate them, but we employ Indians, of course.

Mr. BLACKMORE: Then they would be under the direct supervision of governmental officials?

Hon. Mr. HARRIS: That is right.

Mr. BLACKMORE: I am interested in knowing why they should not succeed in Saskatchewan.

Mr. MACKEY: I did not say that they did not succeed in Saskatchewan. But I do recall a case in Kamloops, B.C., where the reserve farm was not really successful.

Mr. BLACKMORE: What was it that caused Mr. Tootoosis, who is an outstanding Indian, to object to them?

Hon. Mr. HARRIS: He did not say. I think he was concerned with the right of the Indian to repel anyone coming on the reserve without his consent.

Mr. BLACKMORE: His general impression would be that it should only be done by and with the consent of the band council?

Hon. Mr. HARRIS: That is right.

Mr. MURRAY: Regarding Prairie Farm Assistance, I think there is a very good example of it to be found at the Little Wood River in the Pemberton district.

Mr. MACKEY: But that project has not been completed and I could not say at the moment to what extent the Indians will continue. I do not think anyone will go there until the work has been completely established.

Mr. MURRAY: I think it is a fact that the PFRA is lowering the level of the river and reclaiming many thousands of acres of land, and automatically reclaiming that land for the Indians.

Mr. MacKAY: That is the purpose of the project.

The CHAIRMAN: Section 70, subsection (1).

Carried.

Subsection (2), application of profits.

Mr. CHARLTON: Is there any restriction to the size of the farm operation on the reserve?

Hon. Mr. HARRIS: There is none in section 70. If you have in mind that we might use the whole of the reserve to the exclusion of the Indians—I can assure you that we do not.

Mr. BLACKMORE: Could we have for the record how many such farms have been opened by the government in Saskatchewan?

Mr. MacKAY: We will get that information for you.

The CHAIRMAN: Subsection (2).

Mr. HARKNESS: Does that mean that the profits which accrue from these farms will go into a fund and remain at the disposal of the minister?

Hon. Mr. HARRIS: The profits accruing will go into the consolidated revenue fund. The profits may be used for other purposes to the advantage of the Indians, such as loans to Indians, or to extend farming operations or in any other way that the minister considers desirable to promote farming.

Mr. HARKNESS: No, the minister does not use these profits for this purpose, they go into the consolidated revenue fund.

Hon. Mr. HARRIS: Agreed.

Mr. HARKNESS: I do not think that is right, they should go into the band funds. I do not see any reason why they should go into the consolidated revenue fund rather than into the band fund.

Hon. Mr. HARRIS: The consolidated revenue fund has to maintain the operation of the farms, of course, and the only thing that the band contributes is their land, which admittedly is of value. But we do, I am told, use any profit as indicated in subsection (2), and any profit has always redounded to the benefit of that particular reserve in the manner indicated in there.

Mr. HARKNESS: That may have been the practice but, nevertheless, you see, the funds can be placed in the consolidated revenue fund and thereby would be of no benefit to the Indians at all. If the same lands were leased to a white man the Indian would at least get something out of it, a share of the crop or something, for the use of the land. It certainly seems to me that any profits in a case like this should go into the band fund rather than into the consolidated revenue fund. You say the profits have been used for the benefit of the Indians up to date. Why not provide that these funds shall be earmarked for that purpose?

Hon. Mr. HARRIS: You would not want to go quite that far. You might provide that moneys might be appropriated on the basis of share crop or rental, but I do not think you would want to go so far as to say that the band funds themselves would be the sole beneficiary. You would want to retain these other additional means of spending the profits, would you not?

Mr. APPLEWHAITE: Is the purpose of this educational or to make a profit?

Hon. Mr. HARRIS: It is largely educational.

Mr. HATFIELD: I wonder if the minister could tell us whether there are many of these farms?

Hon. Mr. HARRIS: Well, Mr. Hatfield, as you know, I have been trying to avoid getting into my estimates as much as I could.

Mr. HATFIELD: You take in the maritime provinces, there is a case right in my own constituency on a reserve there where they have one of these farms.

Mr. HARKNESS: I have no objection to this provision, that the minister may apply any profits to extend farm operations and so forth. I think that is perfectly all right. I think there should be something added there to give the minister more authority, if he does not want to make provision that these profits shall be placed in the band funds.

Hon. Mr. HARRIS: Possibly we could let this subsection stand and discuss it further later on.

The CHAIRMAN: Section 71, treaty money.

Carried.

Section 72, regulations; subsection (1).

Carried.

The CHAIRMAN: Subsection (2)?

Carried.

Mr. BLACKMORE: Mr. Chairman, what section are we on now?

The CHAIRMAN: We are on section 72, subsection (2) of the regulations.

Subsection (3), orders and regulations.

(3) The Governor in Council may make orders and regulations to carry out the purposes and provisions of this Act.

Hon. Mr. HARRIS: Excuse me, before we pass on from section 72, I must apologize for not having brought to your attention the fact that the Indian Association of Alberta took objection to any taxation of dogs.

Mr. HARKNESS: One further word in connection with this section 72. It seems to me that the band council should have more say in connection with this matter.

Hon. Mr. HARRIS: If the band council draws up regulations as provided, the Governor in Council will not need to do so.

The CHAIRMAN: Carried. Section 73, elections of chiefs and band councils.

73. (1) Whenever he deems it advisable for the good government of a band, the Governor in Council may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act.

(2) The council of a band in respect of which an order has been made under subsection one shall consist of one chief, and one council for every one hundred members of the band, but the number of councillors shall not be less than two nor more than twelve and no band shall have more than one chief.

(3) The Governor in Council may, for the purposes of giving effect to subsection one, make orders or regulations to provide

(a) that the chief of a band shall be elected by

(i) a majority of the votes of the electors of the band, or

(ii) a majority of the votes of the elected councillors of the band from among themselves, but the chief so elected shall remain a councillor,

- (b) that the councillors of a band shall be elected by
 - (i) a majority of the votes of the electors of the band, or
 - (ii) a majority of the votes of the electors of the band in the electoral section in which the candidates resides and that he proposes to represent on the council of the band.
- (c) that a reserve shall for voting purposes be divided into not more than six electoral sections containing as nearly as may be an equal number of Indians eligible to vote, and
- (d) for the manner in which the electoral sections established under paragraph (c) shall be distinguished or identified.

(4) Where the Minister is satisfied that a majority of the electors of a band do not desire to have the reserve divided into electoral sections and reports to the Governor in Council accordingly, the Governor in Council may order that the reserve shall for voting purposes consist of one electoral section.

Subsection (1)?

Mr. HATFIELD: Where do you have any sheep?

Hon. Mr. HARRIS: There is nothing in here about sheep.

Mr. JUTRAS: What do you mean by that "the Governor in Council may"?

Hon. Mr. HARRIS: That is right. We are providing that the Governor in Council may. That is in the present Act.

Mr. GIBSON: It does not work very frequently at any rate.

Hon. Mr. HARRIS: It does not.

Mr. HARKNESS: Could we not take that clause and reword it in this way, that the band council may make regulations in connection with this; but with the provision that if the band council does not so provide that the Governor in Council may do so.

Hon. Mr. HARRIS: If you will turn to section 80, I think you will find that this authority is invested in the band council; if they want to do so they can do so under section 80.

The CHAIRMAN: Section 73, elections of chiefs and band councils; subsection (1).

Mr. BLACKMORE: I was just wondering how you were going to deal with this section. Are you going to take it (a), (b), (c), and so on?

The CHAIRMAN: No, I propose to take them by subsections, (1), (2), (3) and (4).

Hon. Mr. HARRIS: A number of representations have been made with respect to section 73 which I would like to read.

Mr. HARKNESS: As I understand it, these regulations provided by section 72, can be made, under section 80, by the band council.

Hon. Mr. HARRIS: Yes, I think we can take that up when we come to that section. I think they are all there.

Mr. HARKNESS: I would not like to have this passed and find that that is not the case.

Hon. Mr. HARRIS: All right.

The CHAIRMAN: Stand.

Mr. BLACKMORE: Oh, I see, if the bands do not act on their own you can do all these things under the Governor in Council.

Hon. Mr. HARRIS: Yes.

Mr. BLACKMORE: Now we are on the second section of section 72; or is it section 73?

The CHAIRMAN: What was that last?

Mr. BLACKMORE: I was just wondering where we are.

The CHAIRMAN: We are on section 73, subsection (1).

Hon. Mr. HARRIS: There have been a number of representations made with respect to section 73 and I think they are all combined in the report of this discussion at the conference. There were a number of them which came up for consideration before the conference, but if we will look at section 30 of the summary on page 6 of the conference, it reads:—

The composition of the Band Council as outlined in section 73 (2) was discussed at length, and several of the representatives objected to the minimum number of councillors (2) as being too small. The British Columbia representatives, for instance, pointed out that there were many bands in that area where the councillors may work away from the reserve, and therefore it would be difficult to obtain a quorum at a meeting under this section. It was suggested that the minimum of 2 might be raised to 4.

Then, there were a number of representations mentioned in section 32 of the report:

The question of absentee councillors (section 77 (2) (b) (ii) was discussed at some length and it was felt that the provision that the office of the chief or councillor becomes vacant when a chief or councillor has been absent from council meetings for three consecutive months was not practical with respect to those bands who do not hold monthly meetings. It was felt that it would be better if the section were to read "three consecutive meetings" rather than "months". Consideration will be given to those special areas where Band Councils do not meet monthly.

Mr. BRYCE: Have you had representation from some of the bands that they want to continue the hereditary system of appointing their chiefs?

Hon. Mr. HARRIS: We have, from Gordon's, Poor Man's, and a number of others; saying that the Indians desire to choose their own chiefs and not leave it to the Indian superintendent; also, that they be allowed to hold an election every three years, with the right to re-elect a good chief. I take that to mean that they do not want to follow the Indian Act and they think they should be allowed to hold their elections every three years. Those were the only representations.

Mr. HATFIELD: When do they hold their elections now?

Hon. Mr. HARRIS: You mean, at the moment?

Mr. MacKAY: Some, every three years, some every year.

Hon. Mr. HARRIS: Then, from the Kinnosayosayosan Cree bands, Alberta—this is with reference to subsection (3) (a) and (b)—they think that bands should decide which of two methods of electing chiefs shall be used, and that the reserves shall be divided into electoral sections. The Sarcee Indian band, in Alberta, suggest one councillor for every one hundred members of the band. The Indian Association of Alberta suggest that the word "may", after the words "Governor in Council" in line two, be changed to read "must". That is in subsection 4; and in subsection 3 they suggest amending that subsection to read "that the chief of the band shall, with the consent of the electors of the band, be elected by", and in subsection 4 they suggest striking out line 37—striking out the word "may" and substituting the word "shall"; that is in line 10 on page 27; "the Governor in Council shall" instead of "may".

Mr. BLACKMORE: Does the minister find it acceptable to make the changes as suggested?

Hon. Mr. HARRIS: Some of these changes are now in section 73, but the main ones have to do with increasing the number of councillors. We have considered that and we do not see that any particular advantage could be obtained. A

representative from British Columbia did point out that there are times frequently when councillors are away for a long period of time on their own business; and I think I made the obvious retort, that the band probably would not re-elect them under those conditions, that they did not have to elect councillors who would absent themselves in other places on their own business. I am quite prepared to amend the section which reads, "three consecutive months", to read, "three consecutive meetings".

The CHAIRMAN: What if they have only one meeting a year?

Hon. Mr. HARRIS: In a case of that kind, we would have to modify it by regulation making provisions to except them from the provisions of subsection 4 on the grounds that they were a band which only held one meeting a year; and certainly it is not the intention to disqualify a councillor who attends that one meeting. As far as the recommendation of the Indian association with regard to the changing of the word "may" to "shall" is concerned, that again is a matter of draftsmanship.

Mr. NOSEWORTHY: In a case of a council comprised of a chief and two councillors, a quorum would be the chief and one councillor?

Hon. Mr. HARRIS: Right.

Mr. NOSEWORTHY: That means then that the chief and one councillor could carry on the business of the council?

Hon. Mr. HARRIS: Yes.

Mr. HARKNESS: And the reason for putting that in was so as to provide or enable the band to continue the hereditary system of selecting the chief if they so desire?

Hon. Mr. HARRIS: What section is that?

Mr. HARKNESS: Subsection (1).

Hon. Mr. HARRIS: Yes.

Mr. HARKNESS: Are there any of those bands still active?

Mr. MACINNES: Yes. There are a number of bands under the indefinite system at the present time. At the present time there are in round figures 400 bands under the indefinite system, or the survival system; there are 185 under the three year term; and 9 under the one year term. Generally speaking the elective system applies from Ontario inclusive east, and the indefinite system applies from Manitoba inclusive, west. The elective system has only been applied to a limited extent in the West because of divergent views on the subject among the Indians themselves.

Mr. HARKNESS: Is the purpose now to put everybody on the elective system, or do you intend to allow those bands that wish to do so to continue to carry on the hereditary system?

Hon. Mr. HARRIS: The purpose is to extend the elective system, but only where it is desirable, having in mind the experience in the past.

Mr. HARKNESS: I think that is satisfactory.

The CHAIRMAN: Section 73, subsection (1).

Carried.

Subsection (2), composition of council.

Mr. HARKNESS: At the end of this particular subsection I see these words, "and no band shall have more than one chief." I was just wondering how that would apply in the case of the Stoneys, where they have always had three bands, they have had three bands in connection with the Stoneys from time immemorial and each band had a chief, although they are all on the one reserve. I was wondering if it was the purpose of the department to consider the Stoneys as one band, or to continue to recognize them as three separate bands.

Mr. MacKAY: This means that under the elective system they will only have one chief, whereas there could be a number of chiefs under the hereditary system. Under this they would be considered as councillors and would not be regarded as chiefs.

Mr. HARKNESS: The effect of that would be that they would have just one band on the reserve, the separate identity of the three bands would disappear.

Hon. Mr. HARRIS: I did not hear what you were saying.

Mr. HARKNESS: I was referring to the Stoneys, and the effect that this subsection would have on them, where they would continue as three separate bands—

Hon. Mr. HARRIS: They are now.

Mr. HARKNESS: In other words, you propose to let them continue more or less on the division which they now have?

Mr. MacINNIS: The usual practice is to let them follow their wishes, as to whether they wish to remain in three separate bands as at present, or to combine into one band under the elective system.

Mr. HARKNESS: That is fine.

Mr. NOSEWORTHY: Would the department object to an amendment in subsection 4 to provide for 4 elective councillors instead of 2?

Hon. Mr. HARRIS: Well, there is no need of having additional councils unless the work is heavy. We think two would be adequate for the small numbers represented.

The CHAIRMAN: Shall subsection 2 carry?

Carried.

Subsection 3, regulations.

Mr. APPLEWHAITE: With regard to this subsection, number 3, regulations; I presume that these regulations are general in nature and in application and would not be directly applicable to any individual bands. Is that right?

Hon. Mr. HARRIS: No, but generally it is true with respect to the regulations relating to the holding of elections—they are dealt with more fully under section 75, under which the Governor in Council may make orders and regulations with respect to band elections, and so on. This particular subsection 3 has to do with orders and regulations which provide for the choice of a chief, either by the ward system or band vote. They would apply to any bands which adopted that particular procedure.

Mr. APPLEWHAITE: Then I am correct in my assumption that when these regulations are promulgated under this subsection they will be of general application—there may be alternatives in the regulations—but generally they will apply to everyone? One set of regulations will apply to all?

Hon. Mr. HARRIS: Once the regulations are made they will govern the alternative methods of choosing a chief, but they will be under the one system or the other, and the regulations which will apply would depend on the circumstances.

Mr. APPLEWHAITE: Well then, we will put it this way: It is not the intention to promulgate regulations which will apply to one given band only?

Hon. Mr. HARRIS: No.

The CHAIRMAN: Subsection 3.

Carried.

Subsection 4.

Carried.

Section 74—eligibility:

74. (1) No person other than an elector who resides in a section may be nominated for the office of councillor to represent that section on the council of the band.

(2) No person may be a candidate for election as chief or councillor unless his nomination is moved and seconded by persons who are themselves eligible to be nominated.

Mr. APPLEWHAITE: There is one question I have there; would the minister tell us whether there is any difference made under the elective system as between a male and a female member of the band?

Hon. Mr. HARRIS: There is no difference whatever, anybody over twenty-one is now entitled to vote, providing such voter is ordinarily a resident on the reserve; and, under those circumstances, they are entitled to qualify for office. May I observe that there was one objection to the holding of elections in any form, and that was from the president of the Homemakers Club, Caughnawaga, Quebec, who suggested choosing chiefs and councillors according to tribal custom. She asserted the position, which I think I explained the other day, that we could not hold elections, that they have the right to deal with matters of that kind in accordance with their established customs.

The CHAIRMAN: Section 75, subsection (1).

Carried.

Subsection 2.

Carried.

Section 76, subsection 1.

Carried.

Subsection 2.

Carried.

Section 77, tenure of office: subsection 1.

77. (1) Subject to this section, chiefs and councillors shall hold office for two years.

(2) The office of chief or councillor becomes vacant when

(a) the person who holds that office

(i) is convicted of an indictable offence,

(ii) dies or resigns his office, or

(iii) is or becomes ineligible to hold office by virtue of this Act, or

(b) the Minister declares that in his opinion the person who holds that office

(i) is unfit to continue in office by reason of his having been convicted of an offence,

(ii) has been absent from meetings of the council for three consecutive months without being authorized to do so, or

(iii) was guilty, in connection with an election, of corrupt practice, accepting a bribe, dishonesty or malfeasance.

(3) The Minister may declare a person who ceases to hold office by virtue of subparagraph (iii) of paragraph (b) of subsection two to be ineligible to be a candidate for chief or councillor for a period not exceeding six years.

(4) Where the office of chief or councillor becomes vacant more than three months before the date when another election would ordinarily be held, a special election may be held in accordance with this Act to fill the vacancy.

Carried.

Subsection 2.

Mr. HARKNESS: In connection with that, Mr. Harris, you said a few minutes ago that there was a change there which had been requested and which you wanted to make. Is that right?

Hon. Mr. HARRIS: That is right.

Mr. HATFIELD: What does ordinary residence mean?

Hon. Mr. HARRIS: Just exactly what it means in your own case, a person goes on the voters list in your district if he is ordinarily a resident for a certain period of time.

Mr. HATFIELD: I know, but what is your period of time?

The CHAIRMAN: What clause are you talking about, Mr. Hatfield?

Mr. HATFIELD: On this clause 76, eligibility of voters. I thought we were supposed to be on that one now.

Hon. Mr. HARRIS: We have no difficulty with that. If an Indian is ordinarily a resident on the reserve he is qualified for office, if he leaves there, he is not.

The CHAIRMAN: We are now on subsection 2 of section 77.

Mr. HARKNESS: Is the minister prepared to make this change in the wording as proposed, from "month"; to change that to "meeting"?

Hon. Mr. HARRIS: Yes, I can so move; or, perhaps someone else better do it.

The CHAIRMAN: What section are you talking about?

Hon. Mr. HARRIS: (ii) in (b).

Mr. HARKNESS: Yes, the change in the word months—there on page 28.

The CHAIRMAN: Yes, "has been absent from meetings of the council for three consecutive months without being authorized to do so, or".

Mr. HARKNESS: I move that the word "months" be changed to the word "meetings".

The CHAIRMAN: Is that agreeable?

Mr. GIBSON: Had you better not put that "regular meetings"? You see, a special meeting of the band can be had at any time and this does not apply to them.

Hon. Mr. HARRIS: I think we had better let that stand. I think you will agree with it when you consider it further.

The CHAIRMAN: Stand.

Subsection 3.

Carried.

Subsection 4.

Carried.

Mr. CHARLTON: What section are we dealing with now, Mr. Chairman?

The CHAIRMAN: What is that, Mr. Charlton?

Mr. CHARLTON: I asked, what are we dealing with now?

The CHAIRMAN: Section 78; and we will take them by subsections, (a), (b), and (c).

78. The Minister may set aside the election of a chief or a councillor on the report of the superintendent that he is satisfied that

- (a) there was corrupt practice in connection with the election,
- (b) there was a violation of this Act that might have affected the result of the election, or
- (c) a person nominated to be a candidate in the election was ineligible to be a candidate.

Mr. CHARLTON: Are you going to take the word "superintendent" out of there?

Hon. Mr. HARRIS: The report of the superintendent will be the basis upon which the minister will direct an investigation if he is satisfied that there has been corrupt practice in connection with an election or that there has been a violation of the Act which might affect the result of the election, and so on.

Mr. HARKNESS: There is just a point there, you have these words, "that he is satisfied that"; does that apply to the superintendent?

Hon. Mr. HARRIS: No, that applies to the minister.

The CHAIRMAN: Yes, the minister, if he is satisfied with the report of the superintendent.

Mr. HARKNESS: No, the report of the superintendent that he is satisfied.

The CHAIRMAN: No, it reads that the minister may set aside an election on the report of the superintendent if he is satisfied that there had been corrupt practices.

Mr. HARKNESS: I think the man to be satisfied is the minister.

Hon. Mr. HARRIS: Yes, that is what it says.

Mr. HARKNESS: No, it does not say that.

Mr. HATFIELD: It may mean that the power is with the superintendent.

Mr. APPLEWHITE: No, it is not; it is the minister.

Mr. NOSEWORTHY: I think the wording might be improved.

Hon. Mr. HARRIS: Let it stand.

Mr. HARKNESS: I think it is very ambiguous. I would certainly re-write it.

The CHAIRMAN: Section 78 stands.

Hon. Mr. HARRIS: May I just point this out, first of all, that if the superintendent is satisfied that there has been corrupt practice or a violation of the terms of the Act, then the superintendent having so reported to the minister, the minister may set aside the election.

Carried.

The CHAIRMAN: Is it going to be carried or stand?

The MEMBERS: Let it stand.

The CHAIRMAN: Somebody has suggested that it be carried.

Hon. Mr. HARRIS: If you have no objection to my interpretation of it— whenever I as minister receive the report of the superintendent that in his opinion there have been corrupt practices; and, if I am satisfied with the facts contained in such a report, then I, as minister, have the right to set aside such election.

Mr. BLACKMORE: Doesn't the whole thing turn on the wording there, "that he is satisfied that?"

Hon. Mr. HARRIS: No, I am not arguing about the word "that". I am satisfied that it refers to the minister rather than to the superintendent. What I am arguing is that you must first have the report of the superintendent that he was satisfied that there were certain corrupt practices.

Mr. BLACKMORE: I think there is no objection to the general principle involved, but I do suggest that there is objection to the wording.

Hon. Mr. HARRIS: I suggest that there should not be; I suggest there should be no objection to it because—

The CHAIRMAN: Who sets aside the election?

Hon. Mr. HARRIS: The minister sets aside the election. He may do so in his discretion, as you say; but he can only do so if he has in his hands a

report from a superintendent that the superintendent was satisfied as to certain improprieties.

Mr. BLACKMORE: That could be put more accurately in the wording, I think, Mr. Chairman.

Hon. Mr. HARRIS: We had better let it stand so we can consider it further; I think you will find that it does say that.

Mr. BRYCE: I think that is all right, but the Indian may not be satisfied.

Hon. Mr. HARRIS: Of course, the minister is not going to accept the report of his superintendent without investigation, as I said in the first instance.

Mr. BRYCE: I know that the superintendent may say it is all right in making his report, but how about the Indian? How is the Indian to get in touch with the minister providing the superintendent does not report it.

Hon. Mr. HARRIS: Before we took any action on the report of the superintendent in a matter of this kind we would, of course, make a full investigation. And in a case where a superintendent does not make a report and an Indian is not satisfied—

The CHAIRMAN: How about the point Mr. Bryce has raised?

Hon. Mr. HARRIS: Under those conditions perhaps we could agree to re-draft it to meet the point raised by Mr. Bryce: If some Indian had a complaint that there were corrupt practices and that those corrupt practices had not been reported by the superintendent. You have in mind, Mr. Bryce, a case where the superintendent makes a report, and the minister makes his decision on the basis of that report, on the basis of the report from the superintendent and all the facts?

Mr. BRYCE: No, I am thinking of the case where the superintendent received a complaint but does not report it to the department. If an Indian wants to make a complaint in a situation of that kind, what is the procedure?

Hon. Mr. HARRIS: The Indian can approach me at any time he likes by correspondence or by any other method, and if he reports to me that there have been certain improprieties in connection with an election I, as minister, would order an investigation to be made. But this section provides that I will not set aside an election unless the superintendent investigates it and certifies that he was satisfied that there were shortcomings.

Mr. BRYCE: That will be satisfactory to him, but I was wondering what about the Indians?

Hon. Mr. HARRIS: I said he has access to the minister at any time.

Mr. BRYCE: And he could write direct to you?

Hon. Mr. HARRIS: Yes.

Mr. WOOD: Do you make a further investigation before you arrive at a decision?

Hon. Mr. HARRIS: We will begin an investigation directly a report has been received.

Mr. CHARLTON: Supposing you had a report from an Indian that some of these improper practices had been going on on the part of some Indians and the superintendent had not made a report about it to you, would the Indian have an opportunity of reporting to you?

Hon. Mr. HARRIS: All it takes is a signed letter, addressed to me, without a stamp on it.

Mr. WOOD: How would you go about an enquiry on the reserve in a case of that kind, would you go to the superintendent?

Hon. Mr. HARRIS: We would go to the supervisor who would submit it to the agent and make the investigation himself.

Mr. APPLEWHAITE: As a matter of fact, in actual practice, if a complaint involved a charge of partiality on the part of the agent you would still carry out the investigation?

Hon. Mr. HARRIS: Yes. We will let it stand. I think we understand now what we want to do. As it stands now the responsibility rests solely with the minister.

Mr. BLACKMORE: I do not think the present wording does that.

Mr. RICHARD: Under this section, Mr. Minister, if you had a complaint from an Indian and you felt satisfied that an election had not been properly carried out would you have the authority to set it aside?

Hon. Mr. HARRIS: No, I would not, unless the superintendent had reported.

Mr. RICHARD: That was the point.

Hon. Mr. HARRIS: I thought we were agreed on that. I said that I could not set aside an election unless the superintendent had reported to me that he was satisfied that there had been corrupt practice or a violation of the Act.

Mr. RICHARD: You might find the report of the superintendent different from that which you might receive from an Indian, but unless you had a report from the superintendent that he was satisfied as to the fact of irregularity you would have no authority to set such an election aside?

Hon. Mr. HARRIS: No.

Mr. BLACKMORE: I think that what the minister has said is exactly right.

Hon. Mr. HARRIS: We will let it stand, then.

The CHAIRMAN: Section 79, Regulations respecting band and council meetings.

Carried.

Section 80, By-laws.

80. The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,

- (a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases,
- (b) the regulation of traffic,
- (c) the observance of law and order,
- (d) the protection of disorderly conduct and nuisances,
- (e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services,
- (f) the construction and maintenance of water courses, roads, bridges, ditches, fences and other local works,
- (g) the dividing the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone,
- (h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band,
- (i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section sixty,
- (j) the destruction and control of noxious weeds,

- (k) the regulation of beekeeping and poultry raising,
- (l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies,
- (m) the control and prohibition of public games, sports, races, athletic contests and other amusements,
- (n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise,
- (o) the preservation, protection and management of furbearing animals, fish and other game on the reserve,
- (p) the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prescribed purposes,
- (q) with respect to any matter arising out of or ancillary to the exercise of powers under this section, and
- (r) the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days or both fine and imprisonment for violation of a by-law made under this section.

Hon. Mr. HARRIS: Does Mr. Harkness want to check this against section 70?

Mr. HARKNESS: Section 72, is it not?

The CHAIRMAN: I would not say they are all the same. I do not think so.

Mr. BLACKMORE: Would the minister comment on it first before we ask him any questions?

Hon. Mr. HARRIS: This would be the clause whereby the council of an advanced band might pass by-laws much the same as a smaller corporation in any of our municipal organizations in Canada. Needless to say we would like to give this power to band councils as soon as convenient.

Mr. WHITESIDE: Is there any place where it gives the number of council necessary for consent, or is it to be a straight majority?

Hon. Mr. HARRIS: What is that again, please?

Mr. WHITESIDE: The number of the council needed to give consent?

Hon. Mr. HARRIS: To pass these by-laws?

Mr. WHITESIDE: Yes.

Hon. Mr. HARRIS: The council of a band will operate by a majority of the members present. I think that is provided for in the opening subsection. Yes, subsection (3) of clause 2 reads as follows:

(a) a power conferred upon a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band, and

(b) a power conferred upon the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.

Mr. APPLEWHAITE: Is there any power under this such as I think you very often find in many similar regulations giving the band authority to make rules for its own procedure?

Hon. Mr. HARRIS: You mean such as a municipal council?

Mr. APPLEWHAITE: Yes, for the conduct of its own meetings and so forth?

Hon. Mr. HARRIS: I think the answer to your question must be "no"; I mean the question whether there is any provision for the band council to lay down its own procedure.

Mr. BLACKMORE: It looks to me as if section 80 is a very sound one. I wonder whether or not there is a provision under which a band council, if it decides to make an improvement, could seek financial assistance from the government, such as from the consolidated revenue fund, in connection with such a thing as, let us say, the construction and regulation of wells, reservoirs, and other water supplies?

Hon. Mr. HARRIS: We shall be taking care of that under the revolving fund. And if the amount was quite a substantial one and the revolving fund was not adequate for that purpose, we could give consideration to other forms of assistance. But the question has not arisen in practice.

The CHAIRMAN: The Indian Association of Alberta feels that there is a general conflict between the division of authority as between section 66 subsection (3) and section 80 which is now being dealt with.

Hon. Mr. HARRIS: And if you will look at subsection (2) of section 81 at the top of page 30 of the bill, you will see that

(2) A by-law made under section eighty shall come into force forty days after it is made unless it is disallowed by the minister within that period, but the minister may declare the by-law to be in force at any time before the expiration of that period.

Now, the words of section 80 are:

The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the minister, for any or all of the following purposes, namely,...

Mr. HARKNESS: The provisions of section 80 are, generally speaking, the same as the provisions of section 72. The point would come up, I think, as to who was going to make the regulations in the first place.

Is the band council going to do it? And if they are not satisfactory, cannot the minister exercise a power under section 72 to improve them or make what he considers satisfactory? Or is the minister going to make regulations in connection with the things which are listed in section 72, and the band council then will only have power to make regulations in regard to those things which are not specifically mentioned in section 72?

Hon. Mr. HARRIS: If the minister felt that certain regulations were required, the procedure would be to consult the band council, if they had authority to pass that regulation or by-law under section 80. But if they do not feel so inclined, it would still be in the judgment of the minister, having heard representations and objections, as to whether or not that particular by-law or regulation would in fact be for the benefit of the band. And if he still felt so inclined, I think he would still recommend the regulation under section 72.

Mr. BLACKMORE: I think the minister's expression of the principle is completely sound. But is he satisfied with the law implementing that principle so that it would be understood that that is the procedure to be followed, let us say, by a minister six years from now? If we do not get these things into the law, then it may be that a later minister will look at these things and act differently.

Hon. Mr. HARRIS: What I have stated in effect is this: That the minister or the Governor in Council will act as an appeal against a decision of the band council. We do not want to state it so broadly as that. In fact we do want to give the Indians every opportunity to legislate as we think they should. But we would still have to provide for this authority in either the minister or the Governor in Council, whether or not we gave it conditionally to the band council.

Mr. BLACKMORE: I agree with the minister.

The CHAIRMAN: Section 80.

Mr. NOSEWORTHY: Is there any chance that these regulations may be made by the minister and merely approved or disapproved by the band council, and that the band council is merely to be a rubber stamp?

Mr. HARKNESS: Under section 72 the band council has nothing to do with it?

Hon. Mr. HARRIS: That is right.

Mr. HARKNESS: They have no authority whatever.

The CHAIRMAN: They would be given that authority in 80.

Mr. APPLEWHAITE: I am willing that section 80 should be carried, provided it is understood that the minister may, if he sees fit, bring in an additional clause. If the minister and the department do not consider that a procedure clause is necessary, it is all right with me. But I would like to leave with them the power to bring it in.

Hon. Mr. HARRIS: We will give consideration to it. I do not see why a band council should not lay down its own procedure, provided they expedite the business of the band.

The CHAIRMAN: Does section 80 carry?

Carried.

Mr. NOSEWORTHY: That last subsection (r) gives the band only the right to impose a fine. It constitutes the band council into a court of law?

Hon. Mr. HARRIS: No. It constitutes them as a municipal corporation. They may impose a penalty, but the court would have to assess that penalty.

Mr. NOSEWORTHY: "The imposition on summary convictions of a fine not exceeding one hundred dollars or imprisonment . . ."

Mr. HARKNESS: It can make a by-law in connection with it.

The CHAIRMAN: Let us pass section 72.

Mr. HARKNESS: Going back to section 72 where subsection (3) states:

The Governor in Council may make orders and regulations to carry out the purposes and provisions of this Act.

What does that apply to?

Hon. Mr. HARRIS: It is a general provision.

Mr. HARKNESS: A general provision under which you can make orders and regulations of any kind applying to any by-law?

Hon. Mr. HARRIS: That is right.

Mr. HARKNESS: On that point, does not that put you in a position where you may really negate any of these powers which you grant to a band council and so on, so to speak, by the exercise of your power under this subsection (3)?

Hon. Mr. HARRIS: Under subsection (3) the Governor in Council may make regulations for the purposes of the Act to permit for the carrying on of what is stated in the Act, but not to negate what is done under the Act.

Mr. BLACKMORE: But does not this particular subsection give to the Governor in Council the necessary and final decision in all matters mentioned?

The CHAIRMAN: Subsection (2 and subsection (3).

Carried.

Section 81:

81. (1) A copy of every by-law made under the authority of section eighty shall be forwarded by mail by the chief or a member of the council of the band to the Minister within four days after it is made.

(2) A by-law made under section eighty shall come into force forty days after it is made unless it is disallowed by the Minister within that

period, but the Minister may declare the by-law to be in force at any time before the expiration of that period.

Mr. CHARLTON: The first subsection of section 72 says that "The Governor in Council may make regulations . . ."

And this is repeated in subsection (3). Is that necessary?

Hon. Mr. HARRIS: We have set out certain specific regulations in section 72 subsection (1) and in subsection (3). We have the general power.

Mr. CHARLTON: There is the power there to do almost anything, not just what is set out in section 72, but almost anything in the Act.

Hon. Mr. HARRIS: That is right. We feel that we should have the power to make regulations concerning everything in the Act, provided it is necessary to do so.

Mr. CHARLTON: "Necessary"? Is it not stated so in every section of the Act?

Hon. Mr. HARRIS: No. There are many sections which do not vest any power in the Governor in Council.

Mr. APPLEWHAITE: Subsection (3) only applies to the provisions of the Act. You have section (7). You might want to lay down a set of regulations for other things provided for in the Act. I do not think the powers go beyond the provisions of the Act.

Hon. Mr. HARRIS: That is right. It is not practical to administer an Act of this size or content without the power to make regulations. So we have gone about it in two ways. We have in subsection (1) of section 72 stipulated certain types of regulations which we probably will make. But we must have the general right to make general regulations as we may require them from time to time.

Mr. CHARLTON: And this is the only place in the Act where that power is given.

Hon. Mr. HARRIS: That is right. This is a general clause and the wording is the normal wording that you would find in a long Act of this kind.

The CHAIRMAN: Section 72?

Carried.

Mr. CHARLTON: No, it is not carried yet.

The CHAIRMAN: What is your objection?

Mr. CHARLTON: I think there is too much power for the minister or the Governor in Council. He can set aside any by-law or anything that the band council does.

Hon. Mr. HARRIS: It states that we may make regulations for the carrying out of the provisions of this Act.

Mr. APPLEWHAITE: It says that in connection with the things you have power to do, you can make regulations and procedures to do them.

Hon. Mr. HARRIS: That is right.

The CHAIRMAN: Section 72?

Carried.

We are coming to Section 81, subsection (1).

Mr. GIBSON: Mr. Chairman, I see in Section 81, subsection (2)—

The CHAIRMAN: Shall we deal with subsection (1) first?

Mr. GIBSON: The band must forward regulations within four days. I know that some bands will not do it within that time. Yet it says in subsection (2) of

section 81 that a by-law will come into force 40 days after it is made. So I would suggest that it be amended to read: "40 days after it is submitted to the minister."

The CHAIRMAN: It says:

A copy of every by-law made under the authority of Section 80 shall be forwarded by mail by the Chief or a member of the council of the band to the minister within four days after it is made.

Mr. GIBSON: I know that some of these councils will not send it within four days yet it may come into force and the minister may never even have heard of it.

Hon. Mr. HARRIS: Subsection (2) is exactly the way you want it. It comes into effect 40 days after it is made unless it is disallowed. But I cannot disallow it if I have not heard about it.

Mr. GIBSON: In some cases you may not even have an opportunity to hear about it. I think it should read: "40 days after it is submitted to the minister."

Hon. Mr. HARRIS: If we give power to the band to make these by-laws, I think we should go on the assumption that the by-laws will be within their powers rather than that they will not, and that the balance should be in favour of the by-law rather than against it. Therefore we provided that within 40 days after it is passed it will come into force unless I intervene.

Mr. GIBSON: But you must have an opportunity to intervene.

Hon. Mr. HARRIS: But you would be placing a restriction upon it. I think anything mailed in Canada would get here within 36 days.

Mr. HARKNESS: If they do not let him know about it, the by-law is not operative.

Mr. GIBSON: But it is. That is the tragedy of it.

Mr. HARKNESS: I would say that if it is not made as a regulation, then it would not.

Hon. Mr. HARRIS: I see your point of view.

The CHAIRMAN: Section 81, subsection (2).

Carried.

Section 82.

82. (1) Without prejudice to the powers conferred by section eighty, where the Governor in Council declares that a band has reached an advanced stage of development, the council of the band may, subject to the approval of the Minister, make by-laws for any or all of the following purposes, namely,

- (a) the raising of money by
 - (i) the assessment and taxation of interests in land in the reserve of persons lawfully in possession thereof, and
 - (ii) the licencing of businesses, callings, trades and occupations,
- (b) the appropriation and expenditure of moneys of the band to defray band expenses,
- (c) the appointment of officials to conduct the business of the council, prescribing their duties and providing for their remuneration out of any moneys raised pursuant to paragraph (a),
- (d) the payment of remuneration, in such amount as may be approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a),
- (e) the imposition of a penalty for non-payment of taxes imposed pursuant to this section, recoverable on summary conviction, not exceeding the amount of the tax or the amount remaining unpaid, and

(f) with respect to any matter arising out of or ancillary to the exercise of powers under this section.

(2) No expenditures shall be made out of moneys raised pursuant to paragraph (a) of subsection one except under the authority of a by-law of the council of the band.

Hon. Mr. HARRIS: The Sarcee Indian Band of Alberta thought that the consent should be required of two-thirds majority of electors of the band before the band council could impose these assessments. The Indian Association of Alberta suggested amending the section to read:

Where the Governor in Council, with the consent of the electors of the band, declares that a band has reached an advanced stage of development. . .

And the President of the Homemakers Club of Caughnawaga, Quebec, objected to taxation on the reserve. But none of these points were raised at the conference.

The CHAIRMAN: Section 82, subsection (1).

Carried.

Mr. HARKNESS: It says under paragraph (b):

(b) the appropriation and expenditure of moneys of the band to defray band expenses.

Would that include both capital and revenue funds?

Hon. Mr. HARRIS: That is right.

Mr. APPLEWHAITE: What is the meaning of paragraph 54 on page 12 of the conference report?

Hon. Mr. HARRIS: At the top of page 12 of the conference report it reads:

With respect to section 82 dealing with money by-laws, some of the representatives were apprehensive that the Governor in Council might have some power to force Indians to pass money by-laws to tax Indians. The conference was assured that once this section had been applied to a band action under it was by the band council.

These sections deal with the discussion. But I have only been reading where there was absolute opposition.

Mr. APPLEWHAITE: I think the last two explain the section.

The CHAIRMAN: Is that section 82?

Mr. HARKNESS: Paragraphs (c) and (d) of section 82 refer back to the right to expend money raised under paragraph (a). Section 82, subsection (2) reads:

(2) No expenditures shall be made out of moneys raised pursuant to paragraph (a) of subsection (1) except under the authority of a by-law of the council of the band.

Hon. Mr. HARRIS: That is right. We had representations at the conference. I think that council chiefs should be paid a larger sum of money by way of remuneration for the discharge of their duties, and I pointed out that that should be provided for.

Mr. HARKNESS: I think they should. Some of these chiefs have to spend a great deal of their time on band business and it seems to me they should be entitled to more remuneration than they have been getting.

But I do not think they should be able to employ the capital fund of the band for that purpose.

Hon. Mr. HARRIS: We have given consideration to increasing their allowance.

Mr. HARKNESS: I do not think they ought to be permitted to use the revenue fund of the band for that purpose. But I am thinking more of bands, let us say, in Alberta which are getting extra money for leases for oil and gas. It does not seem reasonable to me that they should be forced to impose separate taxes, if they have a lot of money in the revenue fund coming in from oil leases and so on.

Hon. Mr. HARRIS: Yes, but it is a sound principle that the remuneration of persons discharging public business should come from the funds raised from the public, generally speaking.

Mr. HARKNESS: I quite agree with that. I think the capital funds should be left out of it, altogether. But with respect to the revenue funds which I mentioned, that amount may be very considerable, and it might be unnecessary to impose taxes.

Hon. Mr. HARRIS: Under section 66 subsection (1) that can be done by the minister with the consent of the council of the band.

The CHAIRMAN: Section 82, subsection (1).

Carried.

Mr. CHARLTON: Would it not be possible under section 72 subsection (3), if the council of the band did not agree, to impose or make these regulations?

Hon. Mr. HARRIS: You have got me involved there. Would you repeat your question again, please.

Mr. CHARLTON: In subsection (3) of section 72 the council of the band may make orders or regulations under the provisions of this Act; and section 82 is one of the purposes and provisions of this Act.

Hon. Mr. HARRIS: That is right.

Mr. CHARLTON: But supposing you should say to a band council that they should pass a by-law to tax land on a reserve, and supposing they did not wish to do it, could you not, under section 72 subsection (3) bring it into being without the consent of the band council?

Hon. Mr. HARRIS: I do not think that the Governor in Council could make an order taxing Indians on their own reservation.

Mr. APPLEWHAITE: But one of the provisions of section 82 is to enable the Indians at a certain stage of development to tax themselves. Therefore, by regulation as minister, you could not make regulations to tax the Indians because that is not the purpose of the provisions of the Act. It is to enable the Indians to tax themselves.

The CHAIRMAN: Section 82 subsection (1)?

Carried.

Section 82 subsection (2). "Restriction on expenditures."

Carried.

Section 83, "Recovery of taxes."

Carried.

Section 84, "Governor in Council may revoke authority to make money by-laws."

Carried.

Section 85, "Evidence."

Carried.

The CHAIRMAN: Section 86, taxation.

86. (1) Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to sub-

section two of this section and to section eighty-two, the following property is exempt from taxation, namely,

(a) the interest of an Indian or a band in reserve or surrendered lands, and

(b) the personal property of an Indian or band situated on a reserve, and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a)

(b) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property or the succession thereto if the property passes to an Indian.

(2) Subsection one does not apply to or in respect of the personal property of an Indian who has executed a waiver under the provisions of paragraph (f) of subsection two of section fourteen of *The Dominion Elections Act, 1938*.

Mr. GIBSON: Did you receive any representations in connection with this section on taxation?

Hon. Mr. HARRIS: Yes.

Mr. HATFIELD: What about this recommendation in paragraph 10, page 2, of the summary reported at the conference?

Hon. Mr. HARRIS: You mean, the one referring to section 86?

Mr. HATFIELD: Yes.

Hon. Mr. HARRIS: We have these representations: Chief William Joeko Tagagwenene, Wahnapiatae Indian reserve, Manitoulin Island, Ontario, has this to say: Indians of this band wish to have this section removed. They are satisfied with the sections of the present Act dealing with taxation. The Fort Alexander Catholic Association, Pine Falls, Manitoba, say: sections of Act now in force to remain. The Band Council, Shubenacadie Indian Reserve, Nova Scotia, say: exemption of all taxes for Indians on or off the reserves. The Band Council, Abenakis of St. Francis, Pierre-ville, Quebec, are opposed to this section altogether. The Oka Band Council, Quebec, suggest, in regard to subsection 1 (b), that we add the words "or at a chartered bank located in Canada." They consider that money deposited at a chartered bank should be deemed to be personal property situated on the reserve. And with regard to subsection 1, they suggest that it should be changed to read "and no Indian—otherwise subject to taxation in respect of any such property; whether it is for income tax purposes, or otherwise." The Blackfoot Bank Council, of Alberta suggested no changes in taxation should be made. The President of the North American Indian Brotherhood suggests adding sections 102, 103, and 106 of the present Indian Act. The Queen Victoria Treaty Protective Association suggest clarification with respect to exemption from taxation on personal property, and suggest that Indians be exempted from paying radio, hunting, and trapping licences. Then, at the conference this was discussed at considerable length as reported in section 1 and which reads:

With respect to section 86, all of the representatives were of the opinion that this section did not go far enough in providing tax exemption for Indians, and they were opposed to subsection 2 because it relates to a waiver of exemption under the Dominion Elections Act. They recommend that voting privileges should not be conditional upon signing a waiver. It was also asserted that under Article 13 of the Terms of Union between Canada and the Province of British Columbia the Indians of British Columbia were not liable to be so taxed. It was suggested that some consideration should be given to amending the Dominion Elections Act in order to do away with the waiver.

Mr. HARKNESS: Would you put a provision in this section 86 that the produce the Indian grows on land on the reserve should not be subject to income tax?

Hon. Mr. HARRIS: It is not subject to income tax now.

Mr. HARKNESS: And it will not be under this section?

Hon. Mr. HARRIS: No.

Mr. HATFIELD: What about what grows on land outside the reserve?

Hon. Mr. HARRIS: That will be subject to income tax.

Mr. HATFIELD: And of all the other taxes as well?

Hon. Mr. HARRIS: Oh, yes.

Mr. HATFIELD: What are these exemptions on the reserve?

Hon. Mr. HARRIS: In what way do you mean?

Mr. HATFIELD: Well, take an automobile on the reserve, is he exempt from obtaining a licence for it?

Hon. Mr. HARRIS: I have heard it argued that if the automobile is on the reserve and it is not taken off the reserve he does not have to buy a licence from the provincial government but we will leave that to the provincial government.

Mr. HATFIELD: Does he have to pay the gasoline tax?

Hon. Mr. HARRIS: Of course he does, or he won't get any, unless he happens to have a well on the reserve.

The CHAIRMAN: He cannot get gasoline tax-free on the reserve unless it is manufactured on a particular reserve.

Mr. HATFIELD: Does he not have to pay a tax if he buys gasoline on the reserve?

Hon. Mr. HARRIS: How are you going to get gasoline on the reserve without paying the tax on it?

Mr. HATFIELD: What is the idea?

Hon. Mr. HARRIS: Well, you see, you have to buy your gasoline from a retailer and he cannot get it without paying the tax.

The CHAIRMAN: Yes, and he has to buy that gasoline off the reserve.

Mr. APPLEWHAITE: It would appear that a large proportion of the tax exemption is really of little value to him.

Mr. MURRAY: As I understand it, he only pays taxes on what he buys off the reserve, or on what he grows or earns off the reserve.

Mr. WOOD: I understand that if an Indian has a crop worth \$10,000 on the reserve he does not have to pay income tax on it?

Hon. Mr. HARRIS: That is right.

Mr. WOOD: But in the case of crop he grows off the reserve, he would have to pay tax on that?

Hon. Mr. HARRIS: Yes.

Mr. WOOD: And, as I understand it, he is not allowed to vote unless he pays taxes?

Hon. Mr. HARRIS: Provided he does not otherwise hold the right to vote, as a great many Indians do now.

Mr. HARKNESS: It would not affect his right to vote by virtue of having served in the armed forces?

Hon. Mr. HARRIS: No.

Mr. MURRAY: What is the situation with regard to the 2 per cent tax?

Hon. Mr. HARRIS: The 2 per cent tax about which you are speaking, as I understand it, applies in certain of the provinces to goods and supplies which are purchased off the reserve. If he purchases any such goods or supplies I presume he will have to pay that tax also.

Mr. HATFIELD: What about the sales tax, is he exempt from the sales tax?

The CHAIRMAN: Only in the case where the goods are produced and used on the reserve.

Hon. Mr. HARRIS: You are talking about the federal sales tax. That is applied far back from the retailer, it is collected at the source, so to speak.

Mr. HATFIELD: Could he get a rebate on that if he had a store on the reserve?

The CHAIRMAN: No, he has to buy his goods off the reserve.

Mr. HATFIELD: I know that, but hospitals buy their goods and they get a rebate on their sales tax.

Mr. WOOD: This freedom from taxation is rather a myth.

The CHAIRMAN: I don't think so. Some of the members will recall an Indian who had a factory on one of the reserves which many of us visited, a factory which probably makes for him \$50,000 a year, and he pays no income tax and no sales tax when the goods are consumed on the reserve.

Mr. GIBSON: We can't do anything about that, that is Indian law—

Hon. Mr. HARRIS: It is not a matter of the amount, it is a question of the principle involved.

Mr. GIBSON: I would like to move, Mr. Chairman, that this section be struck out completely.

Mr. APPLEWHAITE: I should like to suggest that when we are dealing with the Dominion Elections Act that that is a matter which might be considered, particularly the application of this subsection 2. But we are not dealing with the Elections Act, and we are not going into its merits at this time.

Mr. HATFIELD: If they are outside the reserve they have to pay taxes.

The CHAIRMAN: Do I understand that section 86, subsection 1 is carried? Carried.

Section 86, subsection 2. What is your pleasure on that?

Mr. GIBSON: I move an amendment that it be deleted.

Hon. Mr. HARRIS: Could this be held over so that we could deal with all these amendments at one time?

The CHAIRMAN: Stands.

Section 87, legal rights:

87. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.

Mr. BLACKMORE: Would the minister care to comment on that?

Hon. Mr. HARRIS: We have objections to this one from the Blackfoot Band Council, Alberta. I may say that I read their objection and I am not at all clear as to what it means. They say the council considers that this section, despite guarantee of treaty rights, could be very dangerous in regard to hunting and fishing, and should be more definite as to provincial powers. The Sarcee

Indian Band, of Alberta, are opposed to it; and the Indian Association of Alberta say, "Approved, providing hunting and fishing for food purposes not interfered with."

Well, as you see from the section we have every form of gratification in there. We start out by saying it is subject to the terms of any treaty and any other Act of parliament.

87. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.

Mr. HATFIELD: It does not affect any treaty rights?

Hon. Mr. HARRIS: No, it does not affect their treaty rights at all.

Mr. HARKNESS: But it actually does affect hunting and fishing licences granted to individuals and there are occasions in which the rights granted to Indians under treaty are open to question. I take it from what you have said that there is no doubt with respect to hunting and fishing rights, that they cannot be taken away under provincial law. It seems to me that a study should be made of this whole question. Possibly the only practical settlement which could be made would be by way of commutation of this right in some way.

Hon. Mr. HARRIS: We are in this difficult position, that we have been told by the courts that these treaties have not been abrogated.

Mr. HARKNESS: That is my point, but they have not all been abrogated, some of them are still in effect, but actually in many cases laws passed by the province are directly contrary to the rights guaranteed by treaty. I do not think there is any doubt about that in a large number of cases.

Hon. Mr. HARRIS: In our most recent case, that in Edson, Alberta, the court upheld the treaty against the provincial law.

Mr. HARKNESS: What has been the practical effect of that?

Hon. Mr. HARRIS: Well, what happened in that case was this, that an Indian was charged with an infraction under the provincial law and at trial the court upheld his rights under the treaty. That essentially was the case at Edson. Whether the Indians took certain action which may or may not have been deliberate for the purpose of defying the provincial law, I am not in a position to say; but, at any rate, on the face of it, it appeared to be in defiance of the provincial law; and the magistrate upheld their rights in accordance with the provision of the treaty.

Mr. HARKNESS: There are a number of instances where the rights of the Indian under a treaty have been curtailed and particularly their hunting and fishing rights are not recognized by provincial game officers in every case. The big handicap with regard to the Indian in such cases is that very often he is not in a position to defend himself before the court, with the result that very often he goes to jail or pays a fine, or something along that line. The fact is his treaty rights are ignored, at least by the provincial enforcement officers; and I have very grave doubts, myself, if the decision in the Indian's favour by the magistrate in the case to which you have referred will be taken by provincial game officers as a guide to their future conduct.

Hon. Mr. HARRIS: I do not think the position is quite that. In the first place, so far as it is possible, we try to see that the Indian knows his rights. He is the one who knows most about the conditions of the treaty and the rights which belong to him under it, and we encourage him to take great care of those

rights. In the Edson case, these Indians fell into the hands of the law and the department provided them with counsel; and the outcome of that case was that the court held that the provincial law did not supersede the treaty right. I do not think we could go further than that, but I think the Indian should be encouraged to maintain his rights to hunt and fish.

Mr. BLACKMORE: I am of the opinion that the decision of the court in the Edson case was well taken. I was just wondering what the situation is down here in the province of Quebec.

Hon. Mr. HARRIS: I might say that we are not having the number of cases in Quebec that we have had in Alberta, but I recognize it is a very large subject, and it is one which is taking a good deal of our time from the standpoint of our own conservation branch and of our legal branch, both of whom are trying to work out a basis for all these rights; and between these two branches we are continually dealing with the provincial government; and these rights should be upheld, and where necessary modified to the advantage of the Indians.

Mr. MURRAY: Has there been a change proposed this year in regard to the taking of salmon?

Hon. Mr. HARRIS: There is nothing in this Act which deals with the right to take salmon.

Mr. HATFIELD: You mentioned that there were different treaties in Alberta to what there were in the province of Quebec; what is the difference?

Hon. Mr. HARRIS: I did not say that they were different. There are differences in the types of control we have with respect to hunting and fishing.

Mr. HATFIELD: That would be the same in all the provinces?

Hon. Mr. HARRIS: No.

Mr. HATFIELD: Well, how were the treaties arrived at which now apply in the province of Alberta?

Hon. Mr. HARRIS: They were arranged by commissioners appointed to act for the crown in the right of Canada to negotiate with the Indians for a settlement of their rights in the prairies and all that western country.

Mr. HATFIELD: In each case?

Hon. Mr. HARRIS: There was only one treaty prior to confederation.

Mr. HATFIELD: No, no, now—there was the Boston treaty and the Penobscot treaty and some others.

Hon. Mr. HARRIS: I was talking about hunting, fishing and things of that kind. If you will let me have the reference I will look it up for you.

Mr. HATFIELD: Have you a copy of that treaty, the Penobscot treaty?

Mr. MACINNES: We can look that up for you. May I say this, that there was a treaty negotiated by a military governor known as the Penobscot treaty, and there was one at Halifax, and the Boston treaty.

Mr. HATFIELD: Yes, it is the Penobscot treaty to which I have reference.

Mr. MACINNES: The treaty was drawn up by the British military commander sometime in 1700—I forget the exact date but we can get that for you—it was sometime in the 18th century; and it did make certain provision regarding hunting. But this treaty, according to the record that we have, was never approved by the British government in London; and it was decided in the court in the case of *Rex vs. Syllaby* in Nova Scotia—that would be around 20 years ago or more—and the finding in that case was that it did not have the force and effect of a treaty, and that it could not supersede provincial law. In that case the department provided the Indians with counsel, although in that case they lost.

Mr. HATFIELD: Have you copies of the Penobscot, Halifax or the Boston treaties?

Hon. Mr. HARRIS: Yes, or we can get them for you.

Mr. MACINNES: We can get those for you. They are not in on the treaties that we list in the book of treaties and surrenders, but they are available.

Mr. HATFIELD: I was told on another occasion that they were lost and that you had no record of them.

Mr. MACINNES: I think there is a record of them, I think they can be found.

Mr. HATFIELD: May I have a copy of them?

Mr. MACINNES: Well, they are in the archives. We will look them up for you.

Hon. Mr. HARRIS: Now you understand why I made the answer I did. They were held not to affect the game rights of the Indian.

Mr. HATFIELD: What I wanted to know was if the Indians are protected by them.

Hon. Mr. HARRIS: The answer is that the court held that these treaties did not protect them, and that is why I made the answer I did.

Mr. HATFIELD: Yes.

Hon. Mr. HARRIS: We will be going into that later.

Mr. HATFIELD: The Indians understood that those rights were theirs for all time.

Hon. Mr. HARRIS: I can assure the committee that no Indian is being injured or will suffer through lack of assistance from the department in establishing and maintaining his treaty rights.

Mr. HATFIELD: Everyone says those treaties have been lost and that is why the Indians cannot get their rights under those treaties.

Mr. BLACKMORE: I am very much interested in Mr. Hatfield's very interesting and pointed remarks. The reason I asked about Quebec is this, that I understand that they are not allowed to fish even on rivers flowing through their own reserves.

Mr. HATFIELD: May I say this, Mr. Chairman, that the United States recognizes those treaties; they allow the Indians to pass freely over the border from one country to another and to go over there and sell their baskets and things of that kind.

Hon. Mr. HARRIS: I thought we were dealing with hunting and fishing.

Mr. HATFIELD: Well, the treaty probably deals with other things also.

Hon. Mr. HARRIS: Let me put it this way. We have, as I have said, on many occasions been looking into this matter. But in the case of the maritime provinces the treaties are well known by name and description, and they are available. They have been before the courts, as Mr. MacInnes said, and the courts have held that they do not confer any special hunting and fishing privileges on the Indians, the same as undoubtedly are conferred in the case of the west. I can assure you that we are trying to provide the best protection we can for the Indians and their rights.

Mr. HARKNESS: From the practical point of view if the right of the Indian with regard to hunting and fishing cannot be maintained, and it is quite apparent in many cases that such is now the case, there should be some monetary compensation in the form of a grant to take the place of this right which is no longer maintained for them.

Mr. BLACKMORE: I agree with the principle just enunciated by Mr. Harkness, Mr. Chairman. May I make this suggestion. I think we might just as well get this matter clear now. I do not see any reason why we cannot agree to

let the Indian have a certain amount to compensate him for the loss of these rights and privileges he has always understood were his. I think we should do something to make up to him for his loss. It seems to me it would be a simple matter, where the Indian has always enjoyed these things in abundance, to arrange some compensation for him for their loss.

Mr. HATFIELD: At least, there should be a law to allow them to hunt and fish on their reserve.

Mr. MACINNES: In most cases the Indian is not subject to the game laws, particularly as they relate to hunting and fishing on their own reserves under provincial laws. The courts have upheld that position on many occasions, but there have also been other judgments to the opposite effect. Circumstances vary with respect to the several provinces and also with respect to the treaties in effect relating to Indians in the different provinces, and as to the effect of the legislation passed by the province. Generally speaking, on the reserves the Indians are free to hunt and fish. Fishing is a different matter because of the fact that fishing is governed by regulations passed under the Dominion Fisheries Act, and we have provincial regulations passed under the authority of the Dominion Fisheries Act. It has been held that as this is a federal law regulations under it apply to reserves.

Mr. HATFIELD: And it applies to treaties too, I suppose. Let me say this, Mr. Chairman; I would like to see the Indians all over Canada in the same position. I do not like to see the Indians in one part of the country treated any differently from the Indians in any other part. They should all be treated the same.

The CHAIRMAN: Section 87, shall the section carry?

Carried.

Section 88.

88. (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian.

(2) A person who sells to a band or a member of a band a chattel under an agreement whereby the right of property or right of possession thereto remains wholly or in part in the seller, may exercise his rights under the agreement notwithstanding that the chattel is situated on a reserve.

Mr. BLACKMORE: Were there any comments with regard to this section 88?

Hon. Mr. HARRIS: No, there is no comment on section 88, except the condition to which I referred earlier today, where the Indian will not be subject to having his goods taken except in cases where he has given a conditional sale agreement, or something of that kind.

Mr. GIBSON: I wonder, Mr. Chairman, if this is of any real value? Certainly, they have protection under this, but I think it might in cases work to a real disadvantage in the case of a progressive Indian established on a reserve. I was just wondering here if it would be possible to give the Indian the right to waive this particular section in his own interest.

Hon. Mr. HARRIS: Section 4, subsection 2, might be used for that purpose.

Mr. BLACKMORE: It appears to me that in this section it rather puts the Indian at a disadvantage in many respects when he is prohibited, or protected if you like, with respect to many things which the ordinary person can do with respect to his property.

Mr. MURRAY: I think this is an excellent place again to refer to the credit unions. I think provision should be made in this Act for the adoption of a system of credit unions on the reserves.

Mr. BLACKMORE: I will appreciate it if Mr. Murray will explain to us just how credit unions would be an advantage.

Mr. MURRAY: I would be very happy to do that.

Mr. HARKNESS: With regard to subsection 1 of this section, does that refer to the Indian, to the band, or to both?

Mr. BLACKMORE: I do not see how we can carry this out.

The CHAIRMAN: Are there any more objections to it?

Mr. BLACKMORE: Yes, there are several objections.

The CHAIRMAN: What are the objections? We have proceeded to carry section 87. We shall start with section 88 at the next session.

Now, as far as future sessions are concerned, is it the wish of the committee that we meet at 11:00 a.m. tomorrow morning? What about evening sessions?

Mr. BLACKMORE: I object to evening sessions, Mr. Chairman, unless we have them on a Wednesday night. I think the less we have to be away from sessions of the House, the better it is.

The CHAIRMAN: Would you be agreeable to Sunday night?

Mr. BLACKMORE: No. I would not be in favour of Sunday night. But I would be in favour of Saturday night.

Mr. HATFIELD: Sunday night would suit me.

The CHAIRMAN: We shall adjourn now until tomorrow at 11:00 a.m. in this same room.

At 1:00 p.m. the committee adjourned until tomorrow, Tuesday, April 24, 1951, at 11:00 a.m.

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Indian, Special Committee 1951

SESSION 1951
HOUSE OF COMMONS

CAI
H. J. H.

SPECIAL COMMITTEE
APPOINTED TO CONSIDER

BILL No. 79
AN ACT RESPECTING INDIANS

CHAIRMAN—MR. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 6

TUESDAY, APRIL 24, 1951

WITNESSES:

Hon. W. E. Harris, Minister of Citizenship and Immigration.
Mr. D. M. MacKay, Director, Indian Affairs Branch.
Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch.

OTTAWA
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1951

MINUTES OF PROCEEDINGS

TUESDAY, April 24, 1951.

The Special Committee appointed to consider Bill No. 79, an Act respecting Indians, met at 11 a.m. this day. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Applewhaite, Ashbourne, Blackmore, Boucher, Brown (*Essex West*), Bryce, Cauchon, Charlton, Hatfield, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Noseworthy, Richard (*Gloucester*), Simmons, Valois, Welbourn, Whiteside, Wood.

In attendance: Hon. W. E. Harris, Minister of Citizenship and Immigration; Mr. D. M. MacKay, Director and Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch.

The Committee resumed consideration of Bill No. 79, an Act respecting Indians.

Clauses 88, 89 and 90 were adopted;

Clause 91, allowed to stand;

Clause 92; paragraph (a) was adopted and paragraph (b) allowed to stand;

Clauses 93 to 109 inclusive, were adopted;

Clauses 110, 111 and 112 were allowed to stand;

Clauses 113 to 124 inclusive, were adopted.

At 1 p.m. the Committee adjourned to meet again at 9 p.m. this day.

EVENING SITTING

The Committee resumed at 9 p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Applewhaite, Ashbourne, Blackmore, Boucher, Brown (*Essex West*), Bryce, Cauchon, Charlton, Diefenbaker, Fulton, Gibson, Harkness, Hatfield, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Noseworthy, Richard (*Gloucester*), Smith (*Queens-Shelburne*), Simmons, Welbourn, Whiteside, Wood.

In attendance: Hon. W. E. Harris, Minister of Citizenship and Immigration; Mr. D. M. MacKay, Director and Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch.

The Committee resumed consideration of Bill No. 79, an Act respecting Indians.

Clause 110 was adopted;

Clause 111, sub-clauses (1), (3) and (4) were adopted.

On sub-clause (2) of Clause 111, Mr. Charlton moved in amendment, that the words "fifty per cent" in line 26 be struck out and the words "two-thirds" substituted therefor:

The amendment was negatived on the following division:

Yeas: Messrs. Blackmore, Charlton, Diefenbaker, Fulton, Harkness, Hatfield, Noseworthy—(7).

Nays: Messrs. Applewhaite, Ashbourne, Bryce, Gibson, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Simmons, Welbourn, Whiteside, Wood—(11).

Sub-clause (2) of Clause 111 was then adopted, on division.

Clause 112, sub-clause (1) was adopted on the following division:

Yeas:—Messrs. Applewhaite, Ashbourne, Gibson, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Simmons, Welbourn, Whiteside, Wood—(11).

Nays: Messrs. Blackmore, Bryce, Charlton, Diefenbaker, Fulton, Harkness, Hatfield, Noseworthy—(8).

At 10.20 p.m. o'clock, the members of the Committee were called to the House for a division.

The Committee resumed at 10.40 p.m. o'clock.

Clause 112, sub-clause (2) was adopted on the following division:

Yeas: Messrs. Applewhaite, Boucher, Bryce, Cauchon, Gibson, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Richard (*Gloucester*), Smith (*Queens-Shelburne*), Simmons, Welbourn, Whiteside, Wood—(14).

Nays: Messrs. Blackmore, Charlton, Fulton, Harkness, Hatfield, Noseworthy—(6).

Subject to the understanding that this sub-clause be referred to the Department of Justice for re-wording, sub-clause (3) of clause 112 was adopted on the following division:

Yeas: Messrs. Applewhaite, Boucher, Bryce, Cauchon, Gibson, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Richard (*Gloucester*), Smith (*Queens-Shelburne*), Simmons, Welbourn, Whiteside, Wood—(14).

Nays: Messrs. Blackmore, Charlton, Fulton, Harkness, Hatfield, Noseworthy—(6).

Clause 112, sub-clause (4) was adopted on the following division:

Yeas: Messrs. Applewhaite, Ashbourne, Blackmore, Boucher, Bryce, Cauchon, Fulton, Gibson, Harkness, Hatfield, Little, MacLean (*Cape Breton North and Victoria*), Murray (*Cariboo*), Noseworthy, Richard (*Gloucester*), Smith (*Queens-Shelburne*), Simmons, Welbourn, Whiteside, Wood—(20).

Nays: Mr. Charlton—(1).

At 11.00 p.m. the Committee adjourned to the call of the Chair.

E. W. INNES,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

APRIL 24, 1951.

The Special Committee appointed to consider the Indian Act met this day at 11:00 a.m. The Chairman, Mr. D. F. Brown, presided.

The CHAIRMAN: Could we proceed, gentlemen? If there is no correspondence to be put before the committee we will hear the minister.

Section 88, subsection (1) was introduced at our last meeting. I believe we were on property on reserve not subject to alienation.

Mr. APPLEWHAITE: Mr. Chairman, I think when we left, Mr. Harkness had brought up this question whether the word "Indian" at the end of the subsection might read "of the same band". The point, I think, we were worried about was whether the operation of the section would enable an Indian of a different band to acquire rights within the reserve of the first band.

Hon. Mr. HARRIS: Well, the position is this, that any Indian may purchase goods from any other Indian, but, as you have in mind, he could not purchase and acquire land of a reserve that he is not entitled to live on himself.

Mr. APPLEWHAITE: You are not afraid that there would be an improper use of that section?

Hon. Mr. HARRIS: We have controlled that under the other section where we can refuse approval.

The CHAIRMAN: Shall subsection (1) carry?

Carried.

Subsection (2).

Mr. MURRAY: On subsection (2), you are exposing the Indians to all the evils of the credit system and then when he becomes enmeshed in it people may enter the reserve to remove whatever he may have.

Hon. Mr. HARRIS: This section is the same as we have in the Act at the present time, which permits the holder of a conditional sale agreement on a motor car, for instance, to seize the motor car if the payments have not been kept up.

Mr. MURRAY: It would extend also to sewing machines.

Hon. Mr. HARRIS: Oh, yes.

Mr. MURRAY: The Indian may pay for nearly all of it and owe a small balance and still be subject to seizure. I think the people ought to sell to them at their own risk.

Hon. Mr. HARRIS: This is a partial answer to the complaint which was made on the other side of the case yesterday, that the very fact that we have subsection (1) prevents the Indian from progressing because it does reflect on his credit and restricts his opportunity of doing business.

Mr. WOOD: I have had a little experience with the law that you could not sell Indians anything with a part of the purchase price to be paid on balance. I know of Indians who wished to buy farm machinery, mowers, rakes, and so forth, and because they had to pay all cash the lien against the machine was no good. We were unable to sell them on credit. I think this is an excellent clause and we should adopt it.

The CHAIRMAN: Subsection (2)?

Carried.

Section 89, property deemed to be situated on reserve.

Subsection (1)?

Carried.

Subsection (2), restriction on transfer.

Carried.

Subsection (3), destruction of property.

Carried.

Section 90, certain property on a reserve may not be acquired.

Mr. BLACKMORE: Would the minister say if there has been any comment on that?

Hon. Mr. HARRIS: No, there was no comment on section 90 at any time.

The CHAIRMAN: Subsection (1)?

Carried.

Subsection (2), articles manufactured for sale.

Carried.

Subsection (3), removal, destruction, etc.

Carried.

Subsection (4), penalty.

Carried.

Section 91, departmental employees, etc., prohibited from trading without a licence.

Hon. Mr. HARRIS: Would you allow this section to stand? We have an amendment with respect to it.

Mr. CHARLTON: Mr. Chairman, shall section 91 stand?

The CHAIRMAN: Yes.

Section 92, removal of material from reserve:

92. A person who, without the written permission of the Minister or his duly authorized representative,

(a) removes from a reserve

(i) minerals, stone, sand, gravel, clay or soil, or

(ii) trees, saplings, shrubs, underbrush, timber, cordwood or hay, or

(b) has in his possession anything removed from a reserve contrary to this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

Hon. Mr. HARRIS: There was a recommendation from the North American Indian Brotherhood that we add petroleum and oil to this clause but we think we have it covered without using the words, and in any event the policing of the reserve will prevent any trespass which would result in the obtaining of oil, I would think.

Mr. APPLEWHAITE: In subsection (b), is the word "knowingly" implied?

Hon. Mr. HARRIS: Well, I would not want to say what a magistrate would hold. I think the use of the words "contrary to this section", would indicate a knowing state of mind.

Mr. APPLEWHAITE: Well, if it is not implied it should be inserted.

Hon. Mr. HARRIS: Well, if you want it to stand we will look at it.

The CHAIRMAN: Subsection (b) will stand.

Section 93, sale of intoxicants:

93. A person who directly or indirectly by himself or by any other person on his behalf knowingly

(a) sells, barters, supplies or gives an intoxicant to

(i) any person on a reserve, or

(ii) an Indian outside a reserve,

(b) opens or keep or causes to be opened or kept on a reserve a dwelling house, building, tent or place in which intoxicants are sold, supplied, or given to any person, or

(c) makes or manufactures intoxicants on a reserve, is guilty of an offence and is liable on summary conviction to a fine of not less than fifty dollars and not more than three hundred dollars or to imprisonment for a term of not less than one month and not more than six months, with or without hard labour, or to both fine and imprisonment.

Mr. SIMMONS: I should like to suggest that sections 93 to 98 fall far short of what is required to meet the existing situation in the Yukon territory and the Mackenzie river district of the Northwest Territories, and the observations I wish to make are based on many years of experience as a magistrate in the north in close association with the Indian people. It is my view that the Indians of Canada should be treated in the same way as Canadian citizens of white extraction, in so far as the liquor laws are concerned. How can you expect them to act as full grown men and women and as citizens if you do not deal with them as such.

It is patent to anyone who has resided in the north country that the present law (Indian Act) with respect to the consumption of liquor by Indians is impossible of effective enforcement. I have observed for many years that liquor is obtainable by Indians without difficulty and this statement is most certainly not intended as any reflection on the splendid work of the Royal Canadian Mounted Police because with many times the available force it would still be impossible for them to lessen, to any important extent, the supply of liquor to Indians.

The present restrictions give the widest opportunity to the bootlegger to ply his trade and, needless to say, he is taking the fullest possible advantage of it. The existing conditions will not be improved by any halfway measure such as is proposed by section 95, but only by extending to the Indians the same rights as others with respect to the consumption of liquor. I am convinced that the extension of these rights to the Indian people would result in a more sane and orderly use of intoxicants by them and considerably less lawlessness. The present liquor prohibition against the Indians is no more successful than was the liquor prohibition against the general population some years ago. It has succeeded in discriminating against a section of our people and making law-breakers of some of them for actions which are not considered to be crimes when performed by the majority of the population. The Indians are naturally a proud people. Let us appeal to their pride and give them an opportunity of having something to be proud about. Let us treat them as adults and, with the proper education and guidance, I am confident that within a short time they will be giving the rest of the population an example in moderation and sobriety. I would like to see a greater proportion of the liquor profits spent on publicity on teaching the people both Indian and white the evils of excessive drinking and on the benefits of moderation and sobriety. I am sure you will agree with me that the present laws which treat Indians as children or outlaws, or inferior citizens, is humiliating to them. The best kind of sobriety which our citizens can display is voluntary and based on persuasion, personal conviction and self

discipline. I think we should be concerned with the fact that the restrictive liquor legislation harms the Indians in that it differentiates between them and society as a whole. Such discrimination exposes the Indians to degrading influences. Again, may I repeat that the liquor laws be made to apply equally to the Indians and white people. It is my intention to ask for an amendment to this section if this section is to stand. I intend to move that the relative sections of the present bill be amended to provide that the Indians in the Yukon territory and Mackenzie river district of the Northwest Territories be given the same rights and privileges and be placed on the same footing as white people in regard to the consumption of liquor.

Mr. HATFIELD: Why do you not make your amendment to apply across Canada? Do you not think the Indians should have the same rights in eastern Canada as they have in Western Canada?

Mr. SIMMONS: I am only speaking for my constituency; other members here have the same privilege.

Mr. MURRAY: I think, Mr. Chairman, that here is an excellent opportunity to make an experiment. The Northwest Territories and the Yukon might very easily point the way for this change. It will be difficult to do so in one of the provinces because of the provincial laws, but an experiment could be carried out in the north and if it worked out well there it could easily be adopted in the provinces. As a matter of fact in Alaska the Indian is treated with equality in respect to liquor and that is right across the Yukon border-line. So we have a pretty good example there where it has been tried and has been found to be a success. I will be very glad to support Mr. Simmons in his amendment.

Mr. APPLEWHAITE: Speaking generally, I am in agreement with the proposition that Mr. Simmons has brought forward. I have read with interest the representations as summarized that the Indians have made, and, rightly or wrongly, I feel that the ultimate solution of the liquor question is to make it wide open.

Now, I am not discussing whether or not there should be drink; I am discussing the position of the Indian. It is legal for whites to drink. I feel that if we did make it legal for Indians for six months or a year or thereabouts, administration would be extremely difficult; there would perhaps be a certain amount of tragedy and some crime; but I believe that situation is going to face us sooner or later anyhow, and that after the adjustment period is over the final situation will be much better than it is now. I was going to mention what Mr. Murray has mentioned about the Indians of Alaska; I know quite well the situation in the Alaskan Panhandle, where the Indians are in exactly the same position as the whites and where, if anything, on the average, the Indians are, more sober and more temperate than the whites. The situation, as I find it, is a most unfortunate one in that by the operation of these prohibitions we encourage the bootlegger to go in and persuade the Indian to drink, and he is not even being sold the second grade liquor which is sold by the province of British Columbia, he is being sold poison manufactured by bootleggers whose business it is to work up a thirst amongst the Indians to provide himself a market, and I think that is an unfortunate situation. I would like to say further that I do not pretend to know all about it. I assume that the department has given this matter very close thought and has taken into consideration the situation right across Canada, and that the minister and his departmental officials are convinced that it has got to be done piecemeal as provided by section 79. That being so, I will support it, but I would ask that serious consideration be given to the other situations, for as long as we continue this differentiation we are liable to be contributing, whether we want to or not, to the very condition we are trying to avoid.

Hon. Mr. HARRIS: Before I make answer to Mr. Simmons and Mr. Applewhaite perhaps I should read the comments on these sections from the Indians and from the conference.

Mr. BOUCHER: Before the minister proceeds I wish to say that I would object very much to Mr. Simmons' amendment if it applied to Saskatchewan. I do not think it would be in the interests of the Indians of that province if that amendment were put into effect at the present time.

The CHAIRMAN: The minister.

Hon. Mr. HARRIS: The Indians of the Gordon's, Poor Man's, Day Star, Muskowequan, Fishing Lakes Indian Reserves—Punnichy Agency, and Muscowpetung Indian Reserve, Qu'Appelle Indian Agency, Saskatchewan:

Indians do not want present liquor sections changed.

Indians of the Fort Norman Indian Agency, N.W.T.:

These sections would give the Indians permission to enter any beer parlour or cocktail lounge on proclamation by the Governor in Council in each province. As there are no beer parlours or cocktail lounges operating in the Northwest Territories, the Indians request that liquor be allowed for sale to them in packages under permit the same as those of non-Indian status.

Indians of the Fort Vermilion Indian Agency, Alberta:

Indians consider the liquor provisions of bill 267 just and fair, but disagree generally with the fines. They consider that a gaol sentence should be imposed instead of having to pay a fine.

Chief William Jock Tagagiwenene, Wahnapiatae Indian Reserve, Manitoulin Island, Ontario:

This band believes that the proposed amendment offers the Indians no advantage, and wishes to retain the liquor sections of the present Act.

Okanagan Society for the Revival of Indian Arts and Crafts, Oliver, B.C.:

Any band wishful of having the liquor laws amended should have the same rights as others and be subject to the same laws and restrictions. The society suggests that it might be possible to grant drinking privileges for a probationary period of three years, with the understanding that if such privileges are abused, such a reserve might lose its rights. At the end of the three-year period a hearing should be held before an impartial official, such as a county court judge, who would then decide on the evidence whether the privileges should be continued.

Fort Alexander Catholic Association, Pine Falls, Manitoba:

Full liquor privileges should be given to the Indians, or none at all.

Cree and Chipewyan Bands, Fort Chipewyan Area:

Consider Indians should be allowed to obtain intoxicants by liquor permit instead of having to consume liquor in a licensed premise in town. Consider that consumption of liquor in the home would likely lead to less trouble.

Six Nations of the Grand River, and Mississaugas of the Credit, Ontario:

Consider that the provisions in the bill will lead to greater evil than under existing conditions and suggest that Indians be governed by the laws and regulations in each province and should have the same rights and privileges of buying and consuming as the ordinary resident of the province in which the band is situated.

Superintendent H. Lariviere, Quebec:

Considers that liquor should not be allowed in any way to primitive Indians as it would lead to considerable trouble.

Superintendent L. C. Hunter, Fort Norman Indian Agency, N.W.T.:

States that Indians of the area have asked that liquor be allowed for sale to them in packages under permit the same as to other members of the community.

Father Lauzon, Saanichton, B.C.:

Suggests that intoxicant sections be replaced by the Liquor Act of British Columbia as present Act is inoperative and obsolete.

Indians of the Walpole Island Reserve, Ontario:

Suggests that Indians be permitted to buy and consume intoxicants in accordance with provincial laws.

Public Affairs Institute, Y.M.C.A. Vancouver, B.C.:

Suggest that provincial laws should apply to Indians in the same manner as to other citizens.

Cook's Ferry Band, Nicola Indian Agency, B.C.:

Suggest that Indians be allowed to consume intoxicants on the same conditions as other citizens.

Lower Kootenay Indian Reserve, Creston, B.C.:

Full liquor privileges should be accorded the Indians. Indians are going to have liquor in any event, and in order to stop the Indians from dealing with bootleggers and paying double the price, they should be allowed to have it legally.

Indians of The Pas, Chemawawin, Matthias Colomb, Moose Lake, Red Earth, and Shoal Lake Bands, Manitoba:

Changes in these sections unanimously agreed to.

Indians of the Split Lake Band, Manitoba:

Wish to retain sections now in force.

Band Council, Shubenacadie Indian Agency, N.S.:

Indians should be subject to the provincial liquor laws in the same manner as other persons.

Band Council, Abenakis of St. Francis, Pierreville, Quebec:

Opposed to this section.

Indian War Veterans' Association of Wikwemikong, Ontario:

Believe Indians should have the right to consume intoxicants the same as other citizens.

Chief Shot on Both Sides, Blood Reserve, Alberta:

Does not want Indians to have liquor, present provisions of Act to stand.

I should add that this was his formal presentation last year and he has repeated it on many occasions since; I will have other things to say about that in a moment.

Blackfoot Band Council and Sarcee Indian Band, Alberta:

Opposed to any changes in the intoxicant provisions of the present Act—do not want liquor.

Chief, Bigstone Band, Alberta:

Believes Indians should be permitted to consume intoxicants like other Canadian citizens.

Pat Cappel, representing the Indians of the Touchwood Agency (Gordon's, Poor Man's, Day Star, Muskowequan and Fishing Lake Bands, also the Indians of Muscowpetung Reserve, Qu'Appelle Indian Agency, Saskatchewan):

Opposed to liquor.

Committee of Friends of the Indians, Edmonton, Alberta:

The provisions of the bill provides an unworkable compromise between complete prohibition and the laws governing the consumption of liquor as applied by the provinces. One way out which might meet the will of the Indians on the reserves would be a provision in the bill to enable reserves to hold local option votes if they so desire.

We might as well deal with all the liquor sections at the same time.

Constance Lake Band, Ontario:

Should be extended to include reserves. Believe intoxicant provisions should be deleted and Indians given full rights under provincial liquor laws.

Mrs. B. Gabriel, Oka Indian Reserve, Quebec:

Fear granting right to consume liquor will have detrimental effect on Indians.

Indian Bands, Kootenay Agency, B.C.:

Younger Indians disappointed that bill could not go further, majority accepting change as a step in the right direction, with a few of the older members voicing complete disapproval.

Indian Association of Alberta:

Rejected unanimously—considered to be a violation of the treaties.

President, North American Indian Brotherhood:

Suggest when proclamation made the minister shall designate the name of the Indian tribes to whom it shall apply (reserves within or adjacent to any town, city, village or organized district), but shall not be applied to Indians residing in unorganized districts except when they may be within such definite districts, and the provincial laws shall prevail on or off an Indian reserve. Suggest that no licence for sale of any intoxicant be allowed on any Indian reserve.

Chief and Councillors, Fort Vermilion, Alberta:

Agree with proposed change provided there are more frequent and surprise police patrols to reserves.

Queen Victoria Treaty Protective Association (Representatives from the Little Island Lake, Pelican Lake, Loon Lake, Thunderchild, Little Pine, Onion Lake, Poundmaker, Sweet Grass, Saulteaux, and Moosomin Reserves):

Suggest deleting this provision.

Canadian Legion, Branch 23, North Bay:

Indian veterans should be accorded the same privileges with respect to consumption of intoxicants as other citizens.

British Columbia Hotels Association:

Convention endorsed brief of North American Indian Brotherhood that all Indians be subject to provincial liquor laws with the proviso that no intoxicants be sold on an Indian reserve.

Bands of Southern Vancouver Island—Songhees, Esquimalt, etc.:

Suggest that the laws regarding intoxicants be the same with respect to Indians as other members of the community.

Now, I come back to the brief of the Indian Association of Alberta and to the discussion at the conference. It was pointed out that the treaty No. 6 has in it a clause which reads as follows:

Her Majesty further agrees with Her said Indians that within the boundary of Indian reserves—

Note these words.

—until otherwise determined by Her Government of the Dominion of Canada, no intoxicating liquor shall be allowed to be introduced or sold, and all laws now in force, or hereafter to be enacted, to preserve Her Indian subjects inhabiting the reserves or living elsewhere within Her Northwest Territories from the evil influence of the use of intoxicating liquors, shall be strictly enforced.

This is from Volume 2 of page 37. Indian Treaties and Surrenders.

Mr. MURRAY: But the date?

Hon. Mr. HARRIS: Of the treaty—February 13, 1877.

At the conference, as the summary indicates on page 3, there were a number of opinions expressed and I think we ought to read these into the record commencing with section No. 13:

13. Regarding these sections, there were three views expressed,—(1) that the provisions dealing with intoxicants contained in the present Act be continued; that is, complete prohibition; (2) that provincial liquor laws be made applicable to Indians; (3) a compromise measure, such as is contemplated by section 95, which would allow the Indians to consume intoxicants in public places in accordance with the laws of the provinces, but which would not permit them to be in possession of package goods nor to take liquor on a Reserve.

14. There was a wide range of opinion with respect to these sections. Many of the representatives favored provincial liquor laws, while others were strongly opposed to any change in the Act. It was said that the present liquor provisions could not and should not be changed with respect to those Indians under Treaty 6 in Alberta and in other parts of the province not covered by this Treaty. Some of the representatives stated that if the provincial laws could not be made applicable to the Indians, they would be prepared to accept the provisions made in Bill 79. It is apparent, therefore, that with so many different views expressed, the Conference did not reach any general agreement on this subject.

Now, to answer Mr. Applewhaite and Mr. Simmons: the first obvious answer to Mr. Simmons is that section 4, subsection (2) could be used to exempt the territory of Yukon and Mackenzie from the operation of these sections, as it could be used to exempt from the operation of these sections any reserve or district as the occasion may require. While I would not want to comment on

the wisdom of using liquor profits for education, it should be borne in mind that we do not get any share of these liquor profits and therefore could not use that method of spending it for the benefit of the Indian. Now, these sections are, as everyone knows a distinct compromise from the position of extreme prohibition which is represented almost exclusively, I think, by the Indian himself, and the position stated by Mr. Applewhaite. It is evident that there have been unfortunate and very regrettable instances of crime on Indian reserves in which there can be no doubt that the cause was liquor, and that has prompted these sections and has prompted the continuing opposition to any form of drinking for the Indians. I say that I conclude that that opinion is held by the Indians as well as non-Indians. Nevertheless, the argument that one could have a period of settling down after opening the doors might be very well founded. The experience of the Indian who has gone into the armed services and then found himself after the war unable to drink in public places is a matter of a good deal of concern and the obvious compromise has been reached of giving the Indian an opportunity to show that he can handle his liquor and yet the opportunity not to be so great that there could be a lot of difficulties which could not be righted by the passing of time, and this compromise which simply permits an Indian in any given province to drink in public places, if the lieutenant governor in council so requests, and the Governor in Council so desires, seems to us to be the obvious one to take at the moment, without deciding one way or another whether complete prohibition is the best or whether the provincial liquor law is the best. As I say, there is opposition from the Indians in the west even to this extent of letting down of the barriers. On the other hand there is the opinion expressed by Mr. Simmons. We think that the experimental stage can be reached in this method without opening the door so far that there really might be disastrous results if the experiment was not successful. You have to bear in mind, of course, the interest of the provincial government in these things. We police the reserves, that is, the Royal Canadian Mounted Police are responsible for law and order on the reserves, but if the Indian is permitted to drink off the reserve the business of jailing him if he offends the laws, and prosecuting him will be a matter for the provinces to undertake and so we think they should be consulted in the matter and have the right to ask that this law be applied in their province or otherwise as in their wisdom they deem best. Admitted that this is a compromise, admitted it is an experiment, we think it is wiser to follow this course than to maintain complete prohibition we have. On the other hand, with one stroke should we adopt the suggestion Mr. Simmons has made? Now, if the experiment is successful, and it appears in some districts and in some cases the Indians have shown that they are not any more subject to difficulties in drinking than others, there would be no doubt that the tendency would be to extend to them all the privileges of the non-Indian, but I do suggest that caution and wisdom should dictate a steady and rather slow progress, having in mind the experience rather than the taking of an experiment just to turn out wrong.

MR. APPLEWHAITE: I would like to ask two questions in that connection. May I make it clear that I am not necessarily opposing the minister, I am trying to satisfy myself. If these sections went through as they are now, in a province where an Indian could legally go into a cocktail lounge or beer parlour, would it still be a crime if I had him to dinner at my house and gave him a drink before dinner?

MR. SIMMONS: It should not be so on general principles anyway.

MR. APPLEWHAITE: Of course. I am assuming that I have a drink—

HON. MR. HARRIS: Under section 93 you would be guilty of an offence of having supplied an Indian with liquor.

MR. APPLEWHAITE: But I could take him down to the beer parlour and buy him a drink? That would be all right?

HON. MR. HARRIS: That is right.

Mr. APPLEWHAITE: The other thing I wanted to bring up is I assume if these sections go through the department would have no control over their operation. Now what I am afraid of more than the Indian in this connection is the white. I am wondering, speaking frankly, about this situation. The cocktail lounge which the minister patronizes, if he does, and the one I might patronize, may not be too happy to open its doors and encourage Indian trade. There might be a tendency by people whose sole interest is making money to have a not too high class type of place which might become a dive catering to Indian traffic. We would then not have the Indian drinking with us and getting from us the benefits or disadvantages of our situation—we would still have a most unfortunate situation. Is there any way of protecting against that situation which could be quite unpleasant?

Hon. Mr. HARRIS: Of course we have not consulted with any provincial government about that and would not until it is legislation, but it seems to me that in any given province there will be I suppose—I am not familiar with the subject of cocktail lounges really—places where the Indians might not just go because of the atmosphere and so on, and they would prefer to go elsewhere. That would be particularly a matter of regulation by the provincial authorities as to the standard of their cocktail lounges. I do not think that they can regulate that an Indian should go to this one or should not go to that one.

Mr. APPLEWHAITE: Except quite informally and in a consultative way the department would have no control?

Hon. Mr. HARRIS: No, we would not.

Mr. SIMMONS: I cannot see where any halfway measure as proposed by section 95 can solve the problem. In the Yukon and Northwest Territories the beer parlours and cocktail lounges are limited. Altogether I do not suppose there would be more than seven, possibly, divided over the territory. If those Indians knew they could get liquor there some of them would come for miles and they would neglect their families, neglect their trapping and so on, and I do not see that will really work as the section now stands.

Hon. Mr. HARRIS: I am quite prepared to adopt Mr. Murray's suggestion that the Yukon and Mackenzie territories might be a proper place to try out the more advanced form of liquor legislation that you have suggested. Nevertheless, and I say it with all respect, you feel that your system might solve this problem but there are others absolutely certain it will not. That is why we have tried to be cautious and find a compromise method which perhaps can show us which one would work.

Mr. SIMMONS: It would be a good place to try it out.

Hon. Mr. HARRIS: I am quite prepared to give special consideration.

Mr. SIMMONS: You have the authority under section 4(2).

Hon. Mr. HARRIS: Right.

The CHAIRMAN: How many Indians are there in the Northwest Territories?

Mr. MacKAY: 3,586.

Mr. WOOD: Do I understand Indian boys who have served overseas and who are back in Canada now cannot enter beer parlours and the like?

Hon. Mr. HARRIS: Yes.

Mr. WOOD: They do.

Hon. Mr. HARRIS: Well, I do not know that—

Mr. WOOD: They are well behaved, and while I am on the subject, do you not think the liquor laws create an inferiority complex among Indians. I think it creates that inferiority complex towards the rest of us Canadians and I think that is caused by the present liquor laws. I know and I have seen lots of young Indian boys, who have served overseas, in our beer parlours and they are just about the best behaved boys we have.

Hon. Mr. HARRIS: I think I can say with frankness that is not generally the case. We talked very frankly at the conference about it. The Indians themselves made their arguments on the basis of human dignity, that they were discriminated against, but there was equally violent opposition by Indians to any form—even this.

Mr. WOOD: This Act is trying to bring them up as near as possible to our level?

Hon. Mr. HARRIS: To give them a chance, and to give them an additional step which would show they can come through.

Mr. APPLEWHAITE: Has the department considered anything in the nature of a local option plan?

Hon. Mr. HARRIS: We have considered local option because it was one of the matters I knew the conference would want to discuss, and it is almost impossible to administer. If you had a reserve remote from other reserves and if the Indians on that reserve showed they were capable of purchasing their liquor and taking it to the reserve without others being affected, the situation could be worked out, but there are not many in that particular category.

The CHAIRMAN: Shall we get back to the sections. Shall section 93 carry? Carried.

Section 94?

94. An Indian who

- (a) has intoxicants in his possession,
- (b) is intoxicated, or
- (c) makes or manufactures intoxicants

off a reserve, is guilty of an offence and is liable on summary conviction to a fine of not less than ten dollars and not more than fifty dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

Mr. MURRAY: One of the points which is not brought out is the fact that Indians manufacture a lot of this liquor themselves. They take molasses, for instance, and heat it up and make it into a brew and then distil it in an ordinary kettle. They take wheat and other things and make their own brews up in that part of the country and they fill the hospitals with people who have gone blind and so on from drinking it.

The CHAIRMAN: They add shoe polish too.

Mr. MURRAY: It is very bad for the health of the Indians.

The CHAIRMAN: Shall section 94 carry?

Mr. APPLEWHAITE: Why is the word "off" in the second line on page 34? "Off a reserve" is that because the position on a reserve is taken care of somewhere else?

Hon. Mr. HARRIS: I beg your pardon?

Mr. APPLEWHAITE: The words "off a reserve" on page 34?

Hon. Mr. HARRIS: Yes.

Mr. APPLEWHAITE: Why is there that differentiation?

Mr. MacKAY: Section 96 covers "on a reserve".

Mr. JUTRAS: Do you mean that "person" includes "Indian"?

Hon. Mr. HARRIS: Yes.

The CHAIRMAN: 94 refers to "off a reserve" and 96 is "on a reserve."

Shall 94 carry?

Carried.

Section 95?

95. (1) No offence is committed against subparagraph (ii) of paragraph (a) of section ninety-three or paragraph (a) of section ninety-four if intoxicants are sold to an Indian for consumption in a public place in accordance with a law of the province where the sale takes place authorizing the sale of intoxicants to a person for consumption in a public place.

(2) This section shall not come into force in any province until a proclamation bringing it into force in the province is issued by the Governor in Council at the request of the Lieutenant-Governor in Council of the province.

Mr. SIMMONS: Can that stand for the time being?

The CHAIRMAN: Why do you want 95 to stand, Mr. Simmons?

Mr. SIMMONS: It is my intention to propose an amendment pending the outcome of the deliberations. However, I think we are all satisfied now that the minister has it under consideration and he has the power to grant the privilege under section 4(2) so it would really not be necessary for this to stand. I am agreeable.

The CHAIRMAN: Shall 95(1) carry?

Carried.

95(2)?

Carried.

Section 96?

Carried.

Section 97?

97. The provisions of this Act relating to intoxicants do not apply where the intoxicant is used or is intended to be used in cases of sickness or accident.

Mr. HATFIELD: Would it not be wise to have a doctor's certificate—to buy liquor as medicine?

Mr. MACKAY: That is provided under 98.—“In any prosecution under this Act the burden of proof that an intoxicant was used or was intended to be used in a case of sickness or accident is upon the accused.”

Mr. HATFIELD: Why should they not have a doctor's certificate?

Mr. MACKAY: That is what they do.

Hon. Mr. HARRIS: If they have a doctor's certificate, they are not convicted under 98.

Mr. MURRAY: If there is not a doctor in 500 miles how could they get a doctor's certificate?

Mr. HATFIELD: Why should they not have a doctor's certificate to buy—why should they have to buy it from a bootlegger—

The CHAIRMAN: How can you tell when an Indian is buying liquor—

Mr. HATFIELD: How does he get it?

Mr. JUTRAS: Yes, how does he get it?

The CHAIRMAN: A man goes into a store to buy liquor. He has to have a permit for instance in Ontario, but how are they going to tell when he is applying for the permit whether he is an Indian. You cannot tell by looking at him.

Mr. HATFIELD: They do not sell liquor to Indians in Ontario.

The CHAIRMAN: When he makes application—

Mr. JUTRAS: He is allowed to have liquor on the reserve if he is sick but how will he get that liquor?

The CHAIRMAN: I do not know what the law is in the other provinces—and we had better have some sort of order here. I cannot hear the witness never mind the questions. I am saying that as far as Ontario is concerned—and I am not familiar with the other provinces—but he has to have a permit.

Mr. NOSEWORTHY: He cannot get a permit.

The CHAIRMAN: If they knew he was an Indian that is right, but they do not know he is an Indian.

Mr. JUTRAS: It would not be legal for him to try and get a permit.

Hon. Mr. HARRIS: Is anybody suggesting that an Indian cannot get liquor for medicinal purposes?

Mr. JUTRAS: How does he get it?

Hon. Mr. HARRIS: We provide it.

Mr. HATFIELD: How?

Hon. Mr. HARRIS: On the reserve.

Mr. HATFIELD: Through a bootlegger?

Mr. APPLEWHAITE: That section was in the Act before and I suggest the minister ought to tell us how it applied. Either the minister or the director could tell us how Indians have been supplied with liquor under these circumstances.

Mr. MACKEY: It has been supplied on a doctor's certificate and the Indian would have to prove that he had the certificate.

Mr. HATFIELD: Why not put it in the Act?

Mr. MACKEY: There never was any hesitancy in supplying liquor to Indians for medicinal purposes at any time in my experience.

Mr. MURRAY: May I ask my question now? Between Fort Nelson and Whitehorse is a distance of 600 miles and there is not a doctor between the two points. Nor is there a doctor for some 100 miles on either side of the Alaska highway. There is a considerable Indian population in there. First aid is rendered possibly by missionaries and others so that some provision should be made there for anybody needing alcohol under certain conditions, and it should be supplied.

Hon. Mr. HARRIS: If I know anything about the territory you describe there will be no question but that if there is liquor there it will be used. They will not try to send a telegram out to Ottawa to get permission to use liquor; it will be used for medicinal purposes if it is available. Afterwards, if there is any prosecution launched by anyone who investigates the difficulty he will find himself confronted by section 98 and I doubt whether any magistrate would convict any person under those conditions.

Mr. HATFIELD: What about the hospitals on the reserve?

Hon. Mr. HARRIS: They are amply stored for all emergencies.

The CHAIRMAN: Shall section 97 carry?

Carried.

Section 98, onus of proof.

Carried.

Section 99, certificate of analysis is evidence.

Carried.

Section 100, penalty where no other provided.

Carried.

Section 101?

101. (1) Whenever a peace officer or a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section thirty-three, eighty-nine, ninety-three, ninety-four or ninety-six has been committed, he may seize all goods and chattels by means of or in relation to which he reasonably believes the offence was committed.

(2) All goods and chattels seized pursuant to subsection one may be detained for a period of three months following the day of seizure unless during that period proceedings under this Act in respect of such offence are undertaken, in which case the goods and chattels may be further detained until such proceedings are finally concluded.

(3) Where a person is convicted of an offence against the sections mentioned in subsection one, the convicting court or judge may order that the goods and chattels by means of or in relation to which the offence was committed, in addition to any penalty imposed, are forfeited to His Majesty.

Mr. BLACKMORE: Would the minister comment on section 101(1)?

Hon. Mr. HARRIS: The president of the North Amercian Indian Brotherhood wanted this section struck out. He does not give any reason. The Sarcee Indian band said that the provisions were too abstract. They did not make any particular explanation of that. This is the case of seizure of goods which are being dealt with in contravention of the Act and it is comparable, in a general way, with seizures of goods under the Customs Act.

Mr. BLACKMORE: These have only to do with offences in respect of liquor?

Hon. Mr. HARRIS: Well there is the case where a person under the present law sells goods in contravention of the permit system; there is the case of the person who sells goods which belong to the band and should be retained on the reserve. Those are the two obvious ones.

The CHAIRMAN: Shall 101(1) carry?

Carried.

Section 101 (2).

Carried.

Section 101 (3).

Carried.

Section 102, dispositions of fines.

Carried.

Section 103, description of Indians in writs, etc.

Carried.

Section 104, jurisdiction of magistrates.

Carried.

Section 105?

105. The Governor in Council may appoint persons to be, for the purposes of this Act, justices of the peace and those persons shall have and may exercise the powers and authority of two justices of the peace with regard to

(a) offences under this Act,

(b) offences under the *Criminal Code* with respect to inciting Indians on reserves to commit riotous acts, the prostitution of Indian women and robbing of Indian graves, and

- (c) any offence against the provisions of the *Criminal Code* relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the person or property of an Indian.

Mr. APPLEWHAITE: What is the representation there?

Hon. Mr. HARRIS: There were no representations in writing but there was some discussion about this at the conference. I gave them an undertaking and I think it may be set out there that it was the policy of the department to avoid using a superintendent as a magistrate where it was humanly possible. Statistics show that a very large proportion of all convictions of Indians during 1950 for infringements of the Act were made by magistrates under the provincial system and not by superintendents.

Of course, there are remote areas where the superintendent must have authority or no one else has. There is also the exception of perhaps the less remote areas where we cannot get magistrates to function, and the superintendent will handle cases.

Mr. SIMMONS: It has always worked satisfactorily.

The CHAIRMAN: Shall section 105 carry?

Carried.

Section 106, Indian agent ex officio a J.P.

Carried.

Section 107, Commissioners for Taking Oaths.

Carried.

Section 108?

108. (1) On the report of the Minister that an Indian has applied for enfranchisement and that in his opinion the Indian

(a) is of the full age of twenty-one years,

(b) is capable of assuming the duties and responsibilities of citizenship, and

(c) when enfranchised, will be capable of supporting himself and his dependants,

the Governor in Council may by order declare that the Indian and his wife and minor unmarried children are enfranchised.

(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage.

(3) Where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection one that enfranchises the Indian unless the wife has applied for enfranchisement, but where the Governor in Council is satisfied that such wife is no longer living apart from her husband, the Governor in Council may by order declare that the wife and the minor children are enfranchised.

(4) A person is not enfranchised unless his name appears in an order of enfranchisement made by the Governor in Council.

Mr. BLACKMORE: Would the minister comment on this?

Hon. Mr. HARRIS: There is no particular comment on this section from the Indians. They recognize the right of an Indian to become enfranchised voluntarily although some of them disapprove of that in principle. There was some

comment too that where an Indian became enfranchised his children should have the right to elect, when they reach 21, to revert to the band or not. Otherwise there was no serious objection to that.

Mr. CHARLTON: Would the minister have any serious objection to having that provision in here?

Hon. Mr. HARRIS: Yes, I would. It is contrary to all ordinary transactions whereby a father is responsible for his children and we do not see why the son should be permitted in effect to appeal from his father's decision some years later.

Mr. CHARLTON: In lieu of that will the minister give assurance that the enfranchisement money which the son or children are entitled to will be kept in trust for them until they are 21 years old?

Hon. Mr. HARRIS: If there are special circumstances which require that to be done it can be done under one of the previous sections—I have forgotten which one—but we have not had any complaints of hardship or anything like that.

Mr. CHARLTON: You realize the temptation to a man with a large family who might get quite a nice little sum of money for that family. Why should the children be deprived of that?

Hon. Mr. HARRIS: You have assumed that the father has used the money unwisely. In all probability he has used it to bring his family up. There are a great many people, non-Indians, who need all the money they can get to bring their families up.

The CHAIRMAN: Shall section 108 (1) carry?

Carried.

Section 108(2)?

Mr. APPLEWHAITE: I would like to ask the minister if he will define "enfranchise"?

Hon. Mr. HARRIS: Define what?

Mr. APPLEWHAITE: Enfranchise?

Hon. Mr. HARRIS: Enfranchise is the final act which begins with an application under this section by an Indian to divest himself of his rights of membership in a band, of his rights under the Indian Act, and to assume rights and obligations of a non-Indian.

Mr. APPLEWHAITE: But not necessarily of a Canadian citizen? The reason why I am asking that is that under this subsection (2) an Indian woman who marries an American citizen becomes enfranchised. Now we should be quite clear in our minds on just what she gives up?

Hon. Mr. HARRIS: She becomes enfranchised by marriage to a non-Indian. She then takes on the status of a non-Indian in the eyes of our law. She may as well acquire certain privileges of American citizenship—I do not know—by reason of her marriage to the American.

Mr. APPLEWHAITE: But does she automatically become a voting Canadian?

Hon. Mr. HARRIS: Well, if you are speaking of Canadian citizenship you must bear in mind that all Indians are Canadian citizens to begin with. Enfranchisement has no relation to citizenship as such. It only has relation to band membership and to the Indian Act.

Mr. APPLEWHAITE: I do not know whether I am being too technical on this or not but on enfranchisement under subsection (2) here she loses any disability which she had as an Indian?

Hon. Mr. HARRIS: That is right.

Mr. APPLEWHAITE: And therefore she would automatically become a voting Canadian; specifically she acquires the rights to become a voting Canadian citizen by virtue of the fact she marries a foreigner?

Hon. Mr. HARRIS: That is right.

Mr. APPLEWHAITE: So long as we know that.

Hon. Mr. HARRIS: On her marriage being dissolved by death or divorce, should she return to Canada, she is a Canadian citizen—if you want to use that phrase as distinguished from an Indian, although I do not want to use it.

Mr. RICHARD: How does she become a Canadian citizen by marrying an American?

Hon. Mr. HARRIS: I did not want to make the distinction between a Canadian citizen and an Indian because all Indians born in this country are Canadian citizens. Mr. Applewhaite's point was: was there not an intervening point, legally, which could be said to have occurred just prior to marriage—so that she does not step from the status of an Indian on a reserve to an American citizen. Does she not acquire something else in the process? I think that is the point. My answer is yes, she acquires the position of an enfranchised Indian by the act of marriage, but that the position of an enfranchised Indian is a citizen of Canada who is not under the disability of the Indian Act. I am not familiar with the American laws having to do with what she acquires but there is no question this woman is a Canadian citizen.

Mr. HATFIELD: Would her children receive family allowances?

Hon. Mr. HARRIS: It depends on where she lives to begin with. If she is not living in Canada they would not.

Mr. HATFIELD: She has got to live in Canada, yes.

Mr. NOSEWORTHY: Every Indian is considered to be a Canadian citizen?

Hon. Mr. HARRIS: That is right.

Mr. NOSEWORTHY: As a Canadian citizen she is franchised?

Hon. Mr. HARRIS: No, the Election Act sets out what right of franchise Canadian citizens have.

Mr. NOSEWORTHY: Has an Indian the same right as any other Canadian citizen?

Hon. Mr. HARRIS: An Indian has the same right to vote as any other Canadian citizen.

Mr. NOSEWORTHY: In so far as any Canadian citizen is enfranchised an Indian is?

Hon. Mr. HARRIS: Yes.

Mr. NOSEWORTHY: And how then does he become enfranchised?

Hon. Mr. HARRIS: Enfranchisement has nothing to do with voting; that is something you have to bear in mind. You do not use the word enfranchisement to indicate the right to vote.

Mr. NOSEWORTHY: Is that not the real meaning of the word?

Hon. Mr. HARRIS: No; it may have been used originally as an easy word to describe the legal transition from being under the Indian Act to not being under the Act, and it may have been that whoever first used it and put it into our Indian Act had in mind that what the man would acquire by ceasing to be an Indian would be the right to vote; but enfranchised, as used in the Indian Act, has nothing to do with voting rights.

Mr. BLACKMORE: In the Indian councils, did the Indians generally concur with the minister's attitude that it was quite all right for the father, if he became enfranchised, to take with him his children?

Hon. Mr. HARRIS: Oh, yes, but there were some of them who thought that the child upon reaching adult age should have the right to go back on the reserve, but it was not generally agreed upon.

Mr. BLACKMORE: It seems to me, Mr. Chairman, that it is rather unfortunate, but one of the reasons why we protect the Indians is that they are handicapped to the extent that many of them cannot enter into competition with the white men, so it seems to me that it would be desirable in the case of an offspring who becomes enfranchised with his father that he should have the right, if he so desires, to return to Indian status and to the reserve. It seems to me that there should be some protection there, that the children of a man who becomes enfranchised should be able to re-enter the reservation.

The CHAIRMAN: It has not been my experience that the Indian cannot meet competition when he gets off the reserve; on the other hand it has been my experience that when he does get off the reserve he is just as good as we are and a lot better. In my own constituency and south of my constituency I know that the Indians have been integrated into the population; one of them became a lawyer and a member of the provincial House. He received his commutation, I think, Mr. MacInnis, in 1911. Others have taken a leading part in the life of the cities of Detroit and Windsor.

Mr. BLACKMORE: You might have a very intelligent father in mind but I am thinking of children who would fall far short of that qualification.

The CHAIRMAN: You will find that condition among the whites too.

Mr. BLACKMORE: That is true, but in the case of the Indians they are at a disadvantage with the ordinary whites. I think before we finish up this Act we should make some sort of provision for the man who became enfranchised and give his children back their Indian status if they so desire.

The CHAIRMAN: You think that the idea of the reserve should be encouraged, that we should confine them to the reserve?

Mr. BLACKMORE: I do not believe any such nonsense as that, but I look upon a reserve as a place of refuge to which an Indian may retreat if he cannot meet the competition off the reserve. I think that refuge should be continued until there is no longer any need for such.

Mr. CHARLTON: Would it be too much to ask to have sections 110, 111 and 112 stand, all having to do with the franchise?

Hon. Mr. HARRIS: Perhaps you would agree to a meeting this afternoon. I would like to get that done this week, but we could leave this stand until another meeting.

Mr. CHARLTON: I appreciate that.

The CHAIRMAN: We are now dealing with section 108.

Shall section 108, carry?

Carried.

Subsection (2)?

Carried.

Subsection (3)?

Carried.

Subsection (4)?

Mr. APPLEWHAITE: On subsection (4) I want to get this procedure firmly in my mind and I think it would be wise to do that for the benefit of the committee. Am I right that on her marriage to a white man an Indian woman has still not lost her Indian status until she has applied to the minister and the minister in turn has obtained the order in council?

Hon. Mr. HARRIS: I think the answer is no; that upon her marriage we will take the action whether she applies or not.

Mr. APPLEWHAITE: I am comparing the wording of subsection (2) and (4). Subsection (2) says "on the report of the minister the Governor in Council may" and subsection (4) says: "unless his name appears in an order of enfranchisement made by the Governor in Council."

Hon. Mr. HARRIS: Granted, until the order in council has passed. But I thought the question was whether there would be any action taken until the person applied?

Mr. APPLEWHAITE: The minister can use his own initiative?

Hon. Mr. HARRIS: Yes.

The CHAIRMAN: Section 108, subsection (4)?

Carried.

Section 109? Carried.

Section 110 stands; section 111 stands; section 112 stands.

Now, schools: Sections 113 to 122.

113. The Governor in Council may authorize the Minister, in accordance with this Act,

- (a) to establish, operate and maintain schools for Indian children,
- (b) to enter into agreements on behalf of His Majesty for the education in accordance with this Act of Indian children, with
 - (i) the government of a province,
 - (ii) the council of the Northwest Territories,
 - (iii) the council of the Yukon Territory,
 - (iv) a public or separate school board, and
 - (v) a religious or charitable organization.

114. The Minister may make regulations to

- (a) provide standards for buildings, equipment, teaching, education, inspection and discipline in connection with schools,
- (b) provide for the transportation of children to and from school,
- (c) enter into agreements with religious organizations for the support and maintenance of children who are being educated in schools operated by those organizations, and
- (d) apply the whole or any part of moneys that would otherwise be payable to or on behalf of a child who is attending a residential school to the maintenance of that child at that school.

115. (1) Subject to section one hundred and sixteen, every Indian child who has attained the age of seven years shall attend school.

(2) The Minister may

- (a) permit an Indian who has attained the age of six years to attend school,
- (b) require an Indian who becomes sixteen years of age during the school term to continue to attend school until the end of that term, and
- (c) require an Indian who becomes sixteen years of age to attend school for such further period as the Minister considers advisable, but no Indian shall be required to attend school after he becomes eighteen years of age.

116. An Indian child is not required to attend school if the child

- (a) is, by reason of sickness or other unavoidable cause that is reported promptly to the principal, unable to attend school,

- (b) has passed entrance examinations for high school,
- (c) is, with the permission in writing of the superintendent, absent from school for a period not exceeding six weeks in each term for the purpose of assisting in husbandry or urgent and necessary household duties,
- (d) is under efficient instruction at home or elsewhere, within one year after the written approval by the Minister of such instruction, or
- (e) is unable to attend school because there is insufficient accommodation in the school that the child is entitled or directed to attend.

117. Every Indian child who is required to attend school shall attend such school as the Minister may designate, but no child whose parent is a Protestant shall be assigned to a school conducted under Roman Catholic auspices and no child whose parent is a Roman Catholic shall be assigned to a school conducted under Protestant auspices, except by written direction of the parent.

118. (1) The Minister may appoint persons, to be called truant officers, to enforce the attendance of Indian children at school, and for that purpose a truant officer shall have the powers of a peace officer.

(2) Without restricting the generality of subsection one, a truant officer may

- (a) enter any place where he believes, on reasonable grounds, that there are Indian children who are between the ages of seven and sixteen years of age, or who are required by the Minister to attend school,
- (b) investigate any case of truancy, and
- (c) serve written notice upon the parent, guardian or other person having the care or legal custody of a child to cause the child to attend school regularly thereafter.

(3) Where a notice has been served in accordance with paragraph (c) of subsection two with respect to a child who is required by this Act to attend school, and the child does not within three days after the service of notice attend school and continue to attend school regularly thereafter, the person upon whom the notice was served is guilty of an offence and is liable on summary conviction to a fine of not more than five dollars or to imprisonment for a term not exceeding ten days or to both fine and imprisonment.

(4) Where a person has been served with a notice in accordance with paragraph (c) of subsection two, it is not necessary within a period of twelve months thereafter to serve that person with any other notice in respect of further non-compliance with the provisions of this Act, and whenever such person within the period of twelve months fails to cause the child with respect to whom the notice was served or any other child of whom he has charge or control to attend school and continue in regular attendance as required by this Act, such person is guilty of an offence and liable to the penalties imposed by subsection three as if he had been served with the notice.

(5) A child who is habitually late for school shall be deemed to be absent from school.

(6) A truant officer may take into custody a child whom he believes on reasonable grounds to be absent from school contrary to this Act and may convey the child to school, using as much force as the circumstances require.

119. An Indian child who

- (a) is expelled or suspended from school, or
 - (b) refuses or fails to attend school regularly,
- shall be deemed to be a juvenile delinquent within the meaning of *The Juvenile Delinquents Act, 1929*.

120. (1) Where the majority of the members of a band belongs to one religious denomination the school established on the reserve that has been set apart for the use and benefit of that band shall be taught by a teacher of that denomination.

(2) Where the majority of the members of a band are not members of the same religious denomination and the band by a majority vote of those electors of the band who were present at a meeting called for the purpose requests that day schools on the reserve should be taught by a teacher belonging to a particular religious denomination, the school on that reserve shall be taught by a teacher of that denomination.

121. A Protestant or Roman Catholic minority of any band may, with the approval of and under regulations to be made by the Minister, have a separate day school or day school classroom established on the reserve unless, in the opinion of the Governor in Council, the number of children of school age does not so warrant.

122. In sections one hundred and thirteen to one hundred and twenty-one

- (a) "child" means an Indian who has attained the age of six years but has not attained the age of sixteen years, and a person who is required by the Minister to attend school,
- (b) "school" includes a day school, technical school, high school and residential school, and
- (c) "truant officer" includes
 - (i) a member of the Royal Canadian Mounted Police,
 - (ii) a special constable appointed for police duty on a reserve, and
 - (iii) a school teacher and a chief of the band, when authorized by the superintendent.

Mr. NOSEWORTHY: Once this Act comes into force has the department any plans for improving educational facilities on the reserves, or will things go on as they are?

Hon. Mr. HARRIS: We have been improving the school facilities at a remarkable rate since the summer of 1947 and the annual estimates will bear that out both in the amount of money spent in building and equipment and on the number of additional school units made available. With respect to the teaching standards, I will put on record while considering the estimates the improvement in the standards of the teachers, but I think that you will agree with me that it has also been very remarkable having in mind the demand for teachers in the interval.

Mr. NOSEWORTHY: What progress has been made as outlined in section 113 (b) (i), that is in the making of agreements with governments of the provinces?

Hon. Mr. HARRIS: Until we get the authority of this section—

Mr. NOSEWORTHY: So far there is nothing?

Hon. Mr. HARRIS: There have been understandings and agreements entered into, but someone has argued that they have no validity until we pass this section. I tabled a return six weeks ago showing the number of agreements

entered into with the province of British Columbia in answer to a question from the member for Nanaimo.

Mr. NOSEWORTHY: Just what does the department visualize doing under section 133 (b) (i)? Just how far do you visualize going in the matter of entering into agreements with the provincial government for education?

Hon. Mr. HARRIS: Well, I think it can be stated that any agreement that can be entered into that would be to the advantage of the Indian's education will be entered into.

Mr. RICHARD: Are there any public funds?

Mr. NOSEWORTHY: I am anxious to know how far the department is prepared to go? Personally, I would like to see the whole question of Indian education arranged by agreement with the department to be taken over by the various provincial departments of education. I think the provincial departments of education are in a much better position to do that as they are dealing with that work all the time.

Hon. Mr. HARRIS: Have you seen any of our schools in the more remote areas?

Mr. NOSEWORTHY: I beg your pardon?

Hon. Mr. HARRIS: Have you seen any of our schools in the more remote areas?

Mr. NOSEWORTHY: No.

Hon. Mr. HARRIS: If you will go and have a look at some of them you will come to the conclusion not to make that recommendation—with respect to some anyway.

Mr. NOSEWORTHY: I can see where in the remote areas that might be the case.

Hon. Mr. HARRIS: We have a much better system than some of the provinces.

Mr. NOSEWORTHY: Would you say that applies other than in the remote areas?

Hon. Mr. HARRIS: I will not say where it applies, but I will take you sometime if you want to go.

Mr. NOSEWORTHY: You say in the more remote areas. What about the reserves in southern Ontario?

Hon. Mr. HARRIS: Well, in southern Ontario the most obvious example is the Six Nations reserve at Brantford and there we have eighteen Indian school teachers teaching the children. We think it is a pretty good system.

Mr. NOSEWORTHY: You do not think the provincial Department of Education could show you anything on education?

Hon. Mr. HARRIS: I am pretty sure they could not do much in the way of improving on that one unless you disagree with the principle that where possible and under like circumstances Indians should be employed. The Indians are all qualified teachers, and we think it is a pretty fair job.

Mr. NOSEWORTHY: You say qualified—by what standard?

Mr. MACKEY: Provincial standards existing in the province.

Mr. BLACKMORE: Mr. Chairman, do they teach the course of study which is prescribed in the province in which they dwell?

Mr. MACKEY: Yes, they do. There are some modifications here and there because of the differences between the Indian children and the white children, but generally speaking the curriculum in the province is followed.

Mr. BLACKMORE: Are the schools subject to inspection by the school inspectors of the province?

Mr. MACKEY: Yes, by the school inspectors in every province except British Columbia where we have our own inspector. British Columbia was asked some

years ago to inspect our schools but because of a shortage of inspectors they were not in a position to take over our work, so we have our own inspector there.

Mr. BLACKMORE: Is the minister having any difficulty entering into a suitable agreement with school boards having schools close to reserves?

Mr. MACKAY: It would not be correct to say that in every case where we tried to make an agreement that we have been successful, the reasons for not making an agreement are usually based on the question of accessibility, accommodation, matters of that kind. There is little if any suggestion of discrimination anywhere.

Mr. NOSEWORTHY: What progress is being made in the introduction of vocational education among the Indians?

Mr. MACKAY: Vocational education has gone on for a number of years at different levels and for different purposes. We are not in a position to provide the technical schools, so-called, because the numbers would not justify it, but we do provide vocational training in schools where it will be an advantage.

Mr. NOSEWORTHY: Are Indian girls, for instance, now taught commercial training; are they given commercial training in Indian schools?

Mr. MACKAY: They are. Those who show aptitude are given opportunity to attend a local commercial business college. The department provides a grant for that purpose, but we must have a recommendation of the teacher and the school inspector.

Mr. NOSEWORTHY: Are there any Indian schools as such in which commercial training is given in shorthand and typewriting?

Mr. MACKAY: I think we have such a division in the Kamloops residential school, and one at Mission, B.C., but we endeavour to have the Indian girls who wish to go in for that type of training given instructions in the nearby business college. We contribute anywhere from \$200 up to \$600 for that purpose.

Mr. NOSEWORTHY: Is any secondary school education given beyond the entrance?

Mr. MACKAY: Oh yes, where the children, as I said before, show aptitude. Any Indian child wishing to go on to high school or even to university is given assistance.

Mr. NOSEWORTHY: That work is not carried on in the Indian schools as such?

Mr. MACKAY: No. The department has never planned the extension of our educational system to include high schools and universities. The children go to the provincial high school and where students wish to go on to the university after meeting the necessary qualifications, the department assists them to do so.

Mr. MURRAY: I know you have a number of Indian students in the University of British Columbia.

Mr. MACKAY: Yes, we have seven there.

Mr. MURRAY: Do you assist with regard to these?

Mr. MACKAY: Yes, we do, in four cases.

Mr. MURRAY: I may say your work in regard to domestic science is very good. Home training in some of these day schools on the Alaska highway and elsewhere where young women are taught to make dresses and do domestic art rates very high.

Mr. HATFIELD: What arrangements are made with the university? Do you pay their tuition fees?

Mr. MACKAY: We give a grant, Mr. Hatfield. It depends on the circumstances of the student. I think that we have given not more than \$700 in any one case, but we do contribute.

Mr. HATFIELD: Per year?

Mr. MacKAY: Per year, yes.

Mr. HATFIELD: Do all the universities accept Indians?

Mr. MacKAY: I do not think any Indian has been rejected provided he has met the qualifications for entrance.

Mr. HATFIELD: What about enlargement of schools? Would it not be possible to maintain high schools on these large reserves?

Mr. MacKAY: It has never been the policy so far as I know to extend our system to provide high schools.

Mr. HATFIELD: Why not put it in the policy?

The CHAIRMAN: Do you think that is a good policy?

Mr. MacKAY: We endeavour to get the Indian children to attend the local high schools.

Mr. NOSEWORTHY: What is the situation in that respect with regard to remote reserves? Do you get very many Indian children from remote reserves going into high schools?

Mr. MacKAY: Well, there is an increasing number, Mr. Noseworthy. The children from the remote reserves—at least a good many of them—are taught in the Indian residential schools and we depend, of course, on the recommendation of the principal as to whether the child should go on to high school or not; but as I said before, if a child does show aptitude the department does not hesitate to provide the necessary assistance.

Mr. ASHBOURNE: I am sorry I was not in this committee earlier. I might say that I was up to now in the Public Accounts Committee. I would like to ask a question or two. What proportion of teachers are Indian? Are they mostly Indians?

Mr. MacKAY: No, they are mostly non-Indians. The reserve that has the greatest number of Indian teachers is, of course, the Six Nations reserve, as the minister said, where we have eighteen Indian teachers; but encouragement is being given all the time to Indian students to go into the teaching profession.

Mr. ASHBOURNE: Is there any scarcity of teachers?

Mr. MacKAY: Yes, there is; and that is also the case for non-Indian schools as well as Indian schools.

Mr. ASHBOURNE: Have you sufficient accommodation for all the pupils?

Mr. MacKAY: For all the Indian children in Canada? No, we have not, but we are reducing the number from year to year for whom accommodation is not provided. In 1945, I think there were 11,000 Indian children in Canada without school accommodation. At the present time it is down to approximately 4,000.

Mr. ASHBOURNE: What does that mean, that the younger children are excluded?

Mr. MacKAY: It just means that there is no accommodation. It is not only the younger children but also the older children who have not the opportunity to attend a school. As I said, the department is endeavouring to overcome that backlog.

Mr. ASHBOURNE: You have a policy to build schools?

Mr. MacKAY: We are building them as fast as we can.

Mr. MURRAY: In our district, Fort St. John has an excellent school which is just being completed, and several schools throughout that district have recently been completed and there is a good school to the north, I think it is in the Skeena district, at Lower Post on the Alaska highway, which is now being completed.

Mr. NOSEWORTHY: Has the department anything by way of an educational report available, such as the one published by the departments of education?

Mr. MacKAY: Well, there is a report each year provided to the minister and the deputy minister with respect to the activities of the education division.

Mr. NOSEWORTHY: This is a part of the annual report?

Mr. MacKAY: Well, it is, yes. It has been condensed in recent years. Some years ago, of course, there were restrictions placed on the size of the report that could be printed.

Mr. NOSEWORTHY: Is there available for the public anything in the form of an Indian educational report?

Mr. MacKAY: It is included in the branch report; it is available to the public.

Mr. NOSEWORTHY: Could we hear the representations that have been made to the minister at this time?

Mr. SIMMONS: It is my understanding that the teachers selected by the department for these schools along the Mackenzie river are selected as between Protestants and Roman Catholics in proportion to the number of each faith attending the school; is that right?

Mr. MacKAY: Yes, we endeavour to do that. We try to get a teacher of the faith or belief of the majority of the Indian children.

The CHAIRMAN: Shall we hear the representations made?

Hon. Mr. HARRIS: These are representations received on bill 267 and some of them have been made on bill 79, but they relate to all these sections 113 to 122, so I might as well read them all at once:

Indians of the Gordon's, Poor Man's, Day Star, Muskowequan, Fishing Lake Indian Reserves—Punnichy Indian Agency and Muscowpetung Agency, Qu'Appelle Indian Agency, Saskatchewan:

Indians want the right to send their children to public schools in the same manner as non-Indians in order that they may have the same advantages as any other Canadian, which they claim is now denied them, but granted to immigrants.

Indians of the Fort Norman Indian Agency, N.W.T.:

(Submission forwarded by the Indian superintendent compiled from opinions gathered from the chief and councillors and Indians of the Bands during Treaty payment time.)

Until recently, the only schools in operation through the N.W.T. have been under the auspices of the various religious denominations. Many of the Indian parents in this area at one time attended these schools and now have taken exception to their children attending any school where religious instruction is given or where any hard and fast rule is made with regard to the religious denomination of the teacher. Several new day schools have been built through the N.W.T., and in each settlement there is a church within easy reach from the schools. The Indians, therefore, cannot see why religious instructions should be given from the schools. Also, a welfare teacher, showing exceptional qualifications in welfare work, cannot be transferred to another school unless the majority of the pupils are of the same denomination as the teacher himself. The Indian superintendent states that in one settlement two schools are operating as day schools within a distance of 200 yards of each other, and the entire attendance of both schools could be handled by one teacher.

Mr. MURRAY: May I ask how many members there are in the Fort Norman Band?

Hon. Mr. HARRIS: Yes, we will get that.

Okanagan Society for the Revival of Indian Arts and Crafts, Oliver, B.C.:

Indian children should be given the same educational advantages as afforded to non-Indian children and that they attend public schools. Schools to which Indian children attend should not be termed as "Indian schools". Such schools should be one of the usual type of schools under the provincial Department of Education with no distinction whatsoever made because the children are of a certain race, even though all the children are of Indian status. Qualifications for teachers in present "Indian schools" should be at least those required for the public schools, and the curriculum should be the same; also, teachers should be on the provincial scale. The Fort Alexander Catholic Association, Pine Falls, Manitoba, say that residential and public schools should be retained. Transportation to and from schools for pupils desiring to go on to higher education should be provided, and full religious instruction should be allowed in schools.

The Lower Kootenay reserve, Creston, British Columbia, says that Indians wish to make their own decisions as to what school their children should attend. They desire to send their children to public schools. They make special reference to the Indian school on St. Mary's reserve and say that Indians feel that a child of 6 years of age is too young to be sent to that school unless the management is changed. That is something we have investigated.

Indians of The Pas agreed to these changes.

The chief and the councillors, treaty No. 3, consider the need for higher education should be stressed.

Father Lauzon of Saanichton, British Columbia, suggested new wording for both section 121 and 122—either the teacher being mentioned as being of a certain denomination, or the school.

The B.C. Indian Arts and Welfare Society consider that every Canadian parent should have the right to choose for his children either church supervised or non-sectarian schools, and suggest that the Indian Act be changed to allow "every Indian a free choice in the matter of schools, with provisions for the necessary financial settlements to the municipalities."

The public affairs institute, Y.M.C.A., Vancouver, B.C. suggests allowances to provide for technical training of Indian children who wish to continue their education. They suggest that a system of scholarships and other incentives be set up to encourage Indians to go to high school and university.

I might add that as the director has explained while we may not call them scholarships we provide aid for them to go to high school and university.

The Cook's Ferry band suggest allowances to provide for technical training of Indian children who wish to continue their education and they suggest that education be the same as under provincial standards.

The United Nations Association in Canada, Vancouver branch, suggests that there should be regulations regarding mixed schools, conformity between Indian and provincial schools, provincial supervision of schools, special nonacademic training to fill gaps in Indian children's backgrounds, technical schools, adult education, bursary and scholarship programs for secondary schools and institutions of higher learning, etc.

The Indians of the Touchwood agency want their children to attend public schools and have the advantage of any other Canadians.

The Committee of Friends of the Indians, Edmonton, Alberta, say that the bill completely omits any outline of the department's policy in the education of the Indian people, such as:

1. That every Indian child has the right to the same educational facilities as other children.
2. That like other children their education should be non-sectarian.
3. That they shall be given teachers with special qualifications for teaching Indian children.
4. That the standard of education shall be in every way equal to that of other children.

The Jesuit missionaries of Ontario, Fort Ste. Marie, Ontario, suggests that subsection (2) be deleted.

The secretary of the Canadian Teachers' Federation suggests that as the permissive "may" is used quite frequently and education is a provincial matter for other Canadians, more agreements which the Indian Affairs Branch "may" make with the provinces would be all to the good.

Teslin, Whitehorse, and Carcross bands say that new school sections are not popular and they want children to go to government schools with non-Indian children.

The Kinnohayos and Cree bands, Alberta, suggest that where possible and without consent of the band, the minister will enter into agreements with provincial authorities for the education of Indian children in provincial schools—where distance is prohibitive day schools to be established on reserves.

The Dawson band requests that school matters be taken out of the hands of the churches and be made the direct responsibility of the Indian Affairs branch.

The Indian Association of Alberta approved of the sections.

The president of the North American Indian Brotherhood suggested that we add business and commercial schools, and strike out subsection (2)—which has been done.

With respect to section 115 the Indian Association of Alberta approve providing that this does not apply to treaty money or interest money accruing to the band.

Mr. BLACKMORE: I was not able to catch what the minister said then?

Hon. Mr. HARRIS: I think it has something to do with the section which says that money can be diverted for the education of a child but the Indian Association of Alberta says they approve provided that it is not to apply to interest money or treaty money accruing to the band.

Father Lauzon suggests changing the word "six" to "less than seven".

The Public Affairs Institute suggests deletion of 117 (c).

The Six Nations of the Grand River, Brantford, state that it is obviously unfair not to require a pupil 11 or 12 years of age to attend school simply because the child has passed entrance examinations for high school.

With respect to 118 which I think is 120 in the bill, the Kinnohayos and Cree bands say that parents should decide which school their children shall attend.

The Canadian Catholic Conference recommends that the section be modified so as to guarantee the right of establishing and that of attending denominational schools—perhaps I had better give you the exact reference:

Provided that if the religious denomination of the Indian child is different from that of his parents or of his guardians, such child shall be assigned to a school of his denomination if such school exists.

The Yukon Territory superintendent reports the opinion of his Indians is that section 121 was too inflexible.

The Canadian Catholic Conference wanted the addition of the word "or a boarding school" in 121 as it now is and in 122.

Mr. NOSEWORTHY: 122 (b).

Hon. Mr. HARRIS: That concludes the representations.

The CHAIRMAN: Shall section 113 carry?

Mr. NOSEWORTHY: Just a moment, Mr. Chairman. The whole concensus of opinion so far as these representations go is this. Practically every representation calls for some modification of the present system of Indian education. Is not that true?

Hon. Mr. HARRIS: No, I think it could be said to the contrary that the recommendations were in most cases philosophic conclusions as to the most desirable form and were not any particular complaints against any one thing that the department may be doing.

Mr. NOSEWORTHY: They all point toward greater co-operation with the provinces and the establishment of schools?

Hon. Mr. HARRIS: Oh, yes.

Mr. NOSEWORTHY: Equal to the provincial schools. My first question was: is the department giving consideration to the implementation of those recommendations? That is pretty general, I think, among educationists?

Hon. Mr. HARRIS: I do not think there has been any one subject in the Indian Act that has received more attention than the school sections of the bill as it now is. The conclusion is once again that your Act must be all-inclusive but that what will do for the Yukon or British Columbia may not do in Alberta. It is a matter of expediency and improvisation in order to get the best standard of education for the Indian child.

Mr. BLACKMORE: In glancing over—

The CHAIRMAN: I think Mr. Simmons is next.

Mr. SIMMONS: Mr. Chairman, reverting to the administration of day schools along the Mackenzie river I understand that one half hour a day is provided to permit the representative of a religious denomination to give religious instruction to pupils of their faith. Is that correct?

Mr. MacKAY: That is correct.

Mr. BLACKMORE: Looking over all of these sections so far I have the impression that the department has done an excellent job in providing for education.

Some Hon. MEMBERS: Hear, hear.

Mr. BLACKMORE: For the next ten miles—so to speak.

Mr. HATFIELD: Do treaties have anything to do with education—treaties in the west I mean?

Hon. Mr. HARRIS: Yes, there are provisions in almost every treaty—if not in every one—providing for a teacher or school.

Mr. HATFIELD: I want to ask a question. When are you going to dig the eastern treaties out of the archives and pay some attention to them? You are paying attention to the western treaties; you recognize those but you do not recognize the eastern treaties.

Hon. Mr. HARRIS: I just want to make one correction. It was the courts that did not recognize the eastern treaties.

Mr. HATFIELD: What?

Hon. Mr. HARRIS: It was the courts that did not recognize the eastern treaties.

Mr. HATFIELD: Well why should not the Indians in the east have the same rights as Indians in the west? That is the question I would like to ask of the minister.

Hon. Mr. HARRIS: Have they not got schools? Have they not got the accommodation there that they have in the other provinces?

Mr. HATFIELD: No, they have not.

Mr. RICHARD: In which way have the courts not recognized the eastern treaties?

Hon. Mr. HARRIS: As Mr. MacInnis pointed out yesterday, one treaty that Mr. Hatfield mentioned had been held by the courts in Nova Scotia not to confer upon the Indians certain rights which they thought they had.

Mr. RICHARD: I heard an official last year say in studying this certain treaty that it had been signed by the royal representative at Halifax but that it had not been held to be binding by the courts.

Hon. Mr. HARRIS: That is right.

Mr. RICHARD: Well what was he doing there? Who did he represent there if he did not represent the Crown? You say the treaty was not binding—I did not know the courts held that.

Hon. Mr. HARRIS: They did.

Mr. HATFIELD: The representatives of the Crown signed the Penobscot and Boston treaties and why would that not bind—

Hon. Mr. HARRIS: You cannot argue with me. I have just finished telling you the courts have held in that particular case—

Mr. HATFIELD: I am not talking about the courts, I am talking about the Act. Why do you not have Indians used the same all over Canada? I am quite agreeable that they should be used alike all over Canada.

Hon. Mr. HARRIS: Let us be reasonable.

Mr. HATFIELD: If the courts do not uphold it make it in this Act.

Hon. Mr. HARRIS: Well this Act does apply to all Indians in Canada.

Mr. HATFIELD: I know it does.

Hon. Mr. HARRIS: I am going to assert that your Indians are not discriminated against. They have just as good educational facilities as any others.

Mr. HATFIELD: No, they don't get treaty money.

Hon. Mr. HARRIS: Because they have not a treaty requiring them to be paid money.

Mr. SIMMONS: They don't get treaty money in the Yukon either.

Mr. HATFIELD: They don't get treaty money in British Columbia but what about the North Huron tribes in Ontario? They get treaty money.

Hon. Mr. HARRIS: Because the treaty provided for it.

Mr. HATFIELD: There is no treaty providing for the North Huron tribe in Ontario. The director of Indian Affairs told me so. He said it was a mistake and he said it had been carried on as a mistake.

Mr. MACKAY: You are referring, I assume, to a predecessor. I do not make any such statement.

Mr. HATFIELD: What?

Mr. MACKAY: You must be referring, Mr. Hatfield, to a predecessor of mine.

Hon. Mr. HARRIS: Let me state it simply. Where treaties require the payment of treaty money payment is made. Those treaties do not cover more than half, or slightly more than half of the Indians of Canada. If you think the other Indians should be paid treaty money, go ahead and try to get the Minister of Finance to do it.

Mr. HATFIELD: I am not trying to do anything but to put every Indian in Canada in the same position.

Hon. Mr. HARRIS: You mean then we should pay treaty money to the other half of the Indians who have no treaty requiring it.

Mr. HATFIELD: Sure.

Hon. Mr. HARRIS: Well you are a minority in this room.

Mr. HATFIELD: Where do you get the money to pay treaty money? Was it out of the sale of lands in the west?

Hon. Mr. HARRIS: It was for the purpose of obtaining from them a surrender of their interest in the lands.

Mr. HATFIELD: Right. Now, did not the Indians in the east surrender their lands long before the Indians of the west?

Hon. Mr. HARRIS: That is a historical question which the province of New Brunswick could probably answer better.

Mr. APPLEWHAITE: With respect, we cannot rewrite the treaties.

Mr. HATFIELD: What they did in regard to those lands was that the provinces of Nova Scotia and New Brunswick owned a share of those lands. They bought them from the Hudson's Bay Company. The provinces of New Brunswick and Nova Scotia got very little out of those lands so they have an interest in them. You gave those Indians out there a treaty fund from the lands of Nova Scotia and New Brunswick. There were four provinces in Confederation in the first place—

Hon. Mr. HARRIS: Yes.

Mr. HATFIELD: Those four provinces bought the whole west except British Columbia and half of Ontario and Quebec from the Hudson's Bay Company.

Hon. Mr. HARRIS: Right.

Mr. HATFIELD: For \$1½ million—

Hon. Mr. HARRIS: And the Indians.

Mr. HATFIELD: Yes, they took the Indians to boot. Then they turn around and you give the Indians treaty money in the west for the surrender of lands that belonged to the Dominion of Canada—is not that right?

Hon. Mr. HARRIS: No. I corrected your statement but perhaps you did not understand my correction. You said four provinces on Confederation had bought western areas from the Hudson's Bay Company. I added "and the Indians". That is where the correction should have come in.

Mr. HATFIELD: I do not know about the Indians. The Indians had lands before the Hudson's Bay Company or the Dominion of Canada had them.

Hon. Mr. HARRIS: Yes, that is right. For the purpose of extinguishing the title of the Indian, as well as the Hudson's Bay Company—and the Indian was granted treaty money.

Mr. HATFIELD: Treaty moneys, but the Indians of the east surrendered their lands a long time before the Indians of the west.

Hon. Mr. HARRIS: Before Confederation.

Mr. HATFIELD: Yes, before Confederation.

Hon. Mr. HARRIS: Had you not better go down to New Brunswick and discuss it with them?

Mr. HATFIELD: Well, why should they not get treaty money?

Mr. BLACKMORE: I think Mr. Hatfield's attitude is well founded although I do not propose to argue it. Considerations of this sort lie at the basis of the

proposal I made that we should have an Indian claims commission throughout Canada. Many of these Indians surrendered lands long, long before Canada came into existence but they have rights, nevertheless.

Mr. HATFIELD: I want to say further that the United States recognizes these treaties which we do not—and they were under the King of England at that time. They recognize the rights of these parties to these treaties but we do not recognize them. They are all over at the archives. You have not even got them in your department.

Mr. RICHARD: I do not see that we should be surprised that the Indians are deprived of their rights in the maritimes when the whites even cannot get them.

The CHAIRMAN: There are a number of other recommendations here.

Mr. HATFIELD: The white people down in the maritimes are about as well off as the Indians.

Hon. Mr. HARRIS: There are some further comments which I have received on these sections.

The Blackfoot band council is in favour of the school sections, but would like day schools with transportation of children to school. The council agreed that there should be some religious instruction in the schools.

The British Columbia Indian Arts and Welfare Society—and this is somewhat of a repetition of the former suggestion—suggests that every Canadian parent should have the right to choose for his children that form of education which he feels is best, either church supervised or non-sectarian.

The Native Brotherhood of British Columbia summarize their suggestions:

1. "As a fundamental principle, Indian children should be allowed to attend Canadian public schools" and the per capita cost thereof paid by the federal government.
2. Indian day and residential schools should be free from denominational jurisdiction.
3. Greater facilities and opportunity for education should be provided.

The national secretary, Imperial Order of the Daughters of the Empire, feels that adequate primary and secondary school facilities should be provided.

The Native Brotherhood of British Columbia want the age limit raised from 16 to 18.

Mr. HATFIELD: Mr. Chairman, I would like to ask another question. Do the Indians of western Canada in their treaties have the right to hunt on their reserves at any time of the year—and to fish?

Hon. Mr. HARRIS: Do you want me to go over all the treaties with you now and take the time of the committee to give you answers?

The CHAIRMAN: We are dealing with the subject of schools.

Mr. HATFIELD: I want to ask about eastern Indians with regard to treaties. Have the eastern Indians got to hire another lawyer and make another test case before the courts?

Hon. Mr. HARRIS: I think that could easily be—

Mr. HATFIELD: Will your department pay for the test case for the eastern Indians?

Hon. Mr. HARRIS: You will have to ask us. To look at the treaty first and say whether there is any remote possibility that the Indian would be better off than he is now by having the treaty enforced requires that a great many things be taken into consideration.

Mr. HATFIELD: They contend they will be better off.

Hon. Mr. HARRIS: I know people who contend things that are wrong.

Mr. HATFIELD: They brought a test case up here some years ago. They might have had a poor lawyer sent to make that test case and I want to know if you will pay for another test case. I would like to dig up these treaties and go into this thing. I do not think Indians should be treated differently in different parts of Canada.

The CHAIRMAN: You would have that opportunity if you so desired. You have an opportunity of going into this if you desire but we are dealing with schools now.

Mr. HATFIELD: I am asking the minister if he will bear the expense of a test case. He says the courts are ahead of parliament. I did not know that before.

Hon. Mr. HARRIS: I did not say that.

Mr. HATFIELD: What?

Hon. Mr. HARRIS: I did not say that.

Mr. HATFIELD: You said you would not recognize a treaty of the east because it had been thrown out by the courts.

Hon. Mr. HARRIS: That is a different matter.

Mr. HATFIELD: You say you will not recognize it on account of the court's action. Now, you are the minister. You are above the courts—

Hon. Mr. HARRIS: No, no, no.

Some Hon. MEMBERS: No, no.

Hon. Mr. HARRIS: It is a strange argument from your corner of the House, Mr. Hatfield, anyway.

Mr. HATFIELD: Well, I thought so.

Mr. BOUCHER: May I suggest that we discuss clause 113?

The CHAIRMAN: Shall section 113 carry?

Carried.

Section 114, regulations.

Carried.

Section 115(1), attendance.

Carried.

115(2)?

Carried.

Section 116, when attendance not required.

Mr. APPLEWHAITE: I do not know whether the department can answer this question but they may know. Are there any or many provinces in Canada where Indian children are compelled to go to school after they have passed their entrance to high school?

Mr. MacKAY: I cannot answer that.

Mr. APPLEWHAITE: I had the suggestion from some people friendly to Indians that it was an unfair provision to make it not compulsory to attend school if they have passed their entrance examinations by the age of 15. My recollection is that the same thing pertains for a non-Indian.

Hon. Mr. HARRIS: We can look into that. I know in the province of Ontario there is an age limit but they do not in fact enforce it if the child has passed the entrance examinations.

Mr. APPLEWHAITE: The other question I would ask is under 116(d). With respect I think it may be badly drawn. Is it the intention under (d) that the minister must every year give written approval of the instruction which the child is to receive at home?

Hon. Mr. HARRIS: No, there are certain tribes that have a period of movement at those times. There is an overriding permission to absent themselves at that time.

Mr. APPLEWHAITE: What does "within one year" mean?

Hon. Mr. HARRIS: I thought you were referring to (c). Permission must be given yearly.

Mr. APPLEWHAITE: The section means that approval of the minister is good for one year only.

Hon. Mr. HARRIS: Yes.

Mr. APPLEWHAITE: With respect I do not think that it says so.

The CHAIRMAN: Shall section 116 carry?

Carried.

Section 117, school to be attended.

Carried.

Section 118 (1), truant officers.

Carried.

Section 118 (2), powers.

Carried.

Section 118 (3), notice to attend school.

Carried.

Section 118 (4), no further notices required within one year of previous notice.

Carried.

Section 118 (5), tardiness.

Carried.

Section 118 (6), take into custody.

Carried.

Section 119, child who is expelled or fails to attend deemed juvenile delinquent.

Carried.

Section 120 (1), denomination of teacher.

Carried.

Section 120 (2)?

Carried.

Section 121, minority religious denominations.

Carried.

Section 122, definitions.

Carried.

Mr. APPLEWHAITE: With respect to 122 "a school teacher and a chief of the band, when authorized by the superintendent." Does that mean both the school teacher and the band chief have to be authorized before they become truant officers?

Hon. Mr. HARRIS: With the comma between the answer I would think is yes.

Mr. APPLEWHAITE: The school teacher is not automatically a truant officer?

Mr. WOOD: Reverting to 121 in the case of the number of children belonging to one denomination being rather small, what provisions are made for this small number of children?

Hon. Mr. HARRIS: What do you mean?

Mr. WOOD: I am reverting to section 121. There are some reserves where the number of children is not large and they belong to two different denominations. What provision is made for children attending school if they do not all belong to the one denomination?

Hon. Mr. HARRIS: If the numbers are small—that is of the minority—in all probability they will elect to continue to go to the day school concerned. If for other reasons they would prefer to be removed to a residential school it is possible that would be done.

Mr. ASHBOURNE: Does that include boarding school?

Hon. Mr. HARRIS: Yes.

Mr. BLACKMORE: Just before we leave that, the word “small” is a little vague. Could the minister give us any idea as to what is in his mind?

Hon. Mr. HARRIS: Some of the denominational representatives thought we ought to fix on ten as the number above which, in all probability, separate classes would be arranged for. The minister did not agree with that entirely but it is the figure I think used in the unorganized territory of Ontario.

Mr. BLACKMORE: What would the minister think would be an appropriate number if ten were not?

Hon. Mr. HARRIS: I would not want to say. It depends on each case. We have had no real difficulty in arranging separate instructions if it becomes desirable.

The CHAIRMAN: Section 123, repeal.

Carried.

Section 124, coming into force.

Carried.

Hon. Mr. HARRIS: Now these legal questions have arisen as you know and there are one or two amendments of our own, as well as the sections which Mr. Charlton asked should stand.

The CHAIRMAN: Can we meet this afternoon? What is your wish?

Mr. APPLEWHAITE: Now that we have come to the end, to section 124, I want to make a suggestion here. I do not know whether it is really part of the Act but I would like to suggest that the minister might consider that when this Act is printed for distribution knowing that it will be widely used and referred to, that it be printed with a very full alphabetical index so that people who want to work on this can do so easily.

Mr. NOSEWORTHY: Before we adjourn, what disposition is to be made of the request I placed before the committee regarding the calling of bands of Indians to appear before us?

The CHAIRMAN: That will be discussed when we get through with this business.

Mr. NOSEWORTHY: That will come before the committee?

The CHAIRMAN: Yes. We shall adjourn until 9.00 o'clock this evening.

The committee adjourned.

EVENING SESSION

The committee resumed at 9.00 p.m.

The CHAIRMAN: We will come to order, gentlemen, please. I think this morning we were dealing with section 110.

110. (1) Upon the issue of an order of enfranchisement, any interest in land and improvements on an Indian reserve of which the enfranchised Indian had formerly been in lawful possession or over which he exercised rights of ownership may be disposed of by him by gift or private sale, but if not so disposed of within thirty days after the date of the order of enfranchisement such land and improvements shall be offered for sale by tender by the superintendent and sold to the highest bidder and the proceeds of such sale paid to him; and if no bid is received and the property remains unsold after six months from the date of such offering, the land, together with improvements, shall revert to the band free from any interest of the enfranchised person therein, subject to the payment, at the discretion of the Minister, to the enfranchised Indian, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

(2) When an order of enfranchisement issues or has issued, the Governor in Council may, with the consent of the council of the band, by order declare that any lands within a reserve of which the enfranchised Indian had formerly been in lawful possession shall cease to be Indian reserve lands.

(3) When an order has been made under subsection two, the enfranchised Indian is entitled to occupy such lands for a period of ten years from the date of his enfranchisement, and the enfranchised Indian shall pay to the funds of the band, or there shall, out of any money payable to the enfranchised Indian under this Act, be transferred to the funds of the band, such amount per acre for the lands as the Minister considers to be the value of the common interest of the band in the lands.

(4) At the end of the ten-year period referred to in subsection three the Minister shall cause a grant of the lands to be made to the enfranchised Indian or to his legal representatives.

Is Mr. Charlton here?

Mr. HARKNESS: He will be here in a minute.

Mr. BLACKMORE: What section are we on?

The CHAIRMAN: Section 110, sales of lands of enfranchised Indian.

Shall section 110 (1) carry?

Mr. BLACKMORE: What was the reason why this was caused to stand? Will the minister tell us why?

Hon. Mr. HARRIS: Mr. Charlton asked us to have it stand because he had to go to another meeting.

Mr. APPLEWHAITE: Before Mr. Charlton comes I want to make a remark on the wording of section 110, but not on its merits. I do not like the wording:

"Upon the issue of an order of enfranchisement, any interest in land and improvements on an Indian reserve of which the enfranchised Indian had formerly been in lawful possession ..."

That, I take it, means land of which he was in lawful possession at the time of enfranchisement but it certainly does not say so. If he had had it fifty years ago, he would be in lawful possession and I think the drafting of that might be corrected.

Hon. Mr. HARRIS: We will refer that to the Department of Justice.

Mr. CHARLTON: I would like to ask the minister what he intends to do with this section. What reason has he for having this clause 110(2) in here?

The CHAIRMAN: We are on section 110 (1).

Mr. NOSEWORTHY: Has the enfranchised Indian the right to sell reserve property to non-Indians, or to anyone outside the reserve?

Hon. Mr. HARRIS: That is the provision which Mr. Charlton is referring to, subsections (2) and (3) and (4), but in subsection (1) he has certain rights.

Mr. NOSEWORTHY: Subsection (1) says it may be disposed by him by gift or private sale. Does that mean to anyone?

Hon. Mr. HARRIS: No, that means to an Indian on that reserve.

The CHAIRMAN: Shall we therefore pass section 110 (1), subject to reference to the Department of Justice for possible rewording.

Mr. BLACKMORE: Is there any reason why there might not be put in there a phrase specifying what the minister gave us in clarification? As it reads at the present time it certainly looks as though he could sell it to anybody. I presume that there are other clauses which cover that point?

Hon. Mr. HARRIS: We have that general clause which says that no one is in lawful possession unless he is a member of that band, unless it is allotted to him by the band council, and with approval by the minister. That is the governing section with respect to this matter.

Mr. BLACKMORE: That would mean he could not sell to anyone except an Indian of that band.

Hon. Mr. HARRIS: That is right.

Mr. BLACKMORE: It would simplify matters if a phrase were put in there to clarify that.

Hon. Mr. HARRIS: The answer of the Department of Justice to that would be: We have already provided for that in other sections, and anything else added to that would be unnecessary words.

Mr. BLACKMORE: My observation would be this, that where you have Indians reading this Act, they will not know what is in the various parts of the Act on that subject, and it will therefore tend to cause confusion in their minds when there is a clause like this which reads like something it does not mean.

The CHAIRMAN: It might further confuse them.

Mr. BLACKMORE: No, because then the clause as it will stand will be quite clear on that point and the Indians will interpret it that an Indian cannot sell his land to someone off the reserve.

Mr. NOSEWORTHY: At this place in the clause where it says the land may be disposed of by gift or private sale—do you mean that it could be disposed of to anyone?

Hon. Mr. HARRIS: I do not think there is an Indian in this country who thinks it can be disposed of to a non-Indian. They know the law on that. But if you insert these qualifying words in here I am sure you would have to go over the whole Act and insert similar words in other sections where they are not now.

Mr. DIEFENBAKER: Which is the general section which covers that?

Hon. Mr. HARRIS: It is section No. 20.

Mr. WOOD: It seems to me, Mr. Chairman, that if that was the intention of this Act that it would not be necessary for the Indian who is being enfranchised to sell the land, this points out that if he does not dispose of it the department will.

Hon. Mr. HARRIS: That is what we have provided, that he has an opportunity first to give the land to anybody he wishes or to sell it to anybody he wishes who can take possession; of course, that is the understanding.

Mr. BLACKMORE: Mr. Chairman, I am quite sure if I were just reading this as it stands without knowing the Act as a whole I would say that no Indian would know just exactly where he stands. All it mentions there is the Indian. A person can read through the Act and as far as that clause is concerned he does not find any stipulation to the effect that an enfranchised Indian could not sell to a white man or non-Indian. I believe, as the minister said, in the Act as a whole, as a complete unit, it stands up, but I would not think there were very many Indians who would be capable of reading that Act through and getting the whole picture. It takes pretty well trained legal minds to do that.

Hon. Mr. HARRIS: I can only repeat what I said that I do not think there is an Indian in Canada who thinks he can sell land to a white man.

Mr. BLACKMORE: I think there are a lot of Indians very deeply worried about the thing.

Mr. CHARLTON: They would like to do so?

Hon. Mr. HARRIS: A lot of them would, a lot of them have applied to do so, but they know they cannot. However, I will submit this to the Department of Justice.

The CHAIRMAN: Shall we pass this subject to the minister undertaking to have it referred to the Department of Justice?

Section 110 (1)?

Carried.

Section 110 (2), grant to enfranchised Indians.

Hon. Mr. HARRIS: We have some objections to this but it is not stated in the report. There was a discussion at the conference at which the question was raised as to whether this would result in the reserve land gradually being sold to non-Indians—that is subsections (2), (3), and (4)—and it was pointed out to the conference that since the land would have to be allotted in the first instance by the band council with the approval of the minister that the band council has control over this and the discussion ended there with this section not being opposed by the conference.

Mr. CHARLTON: It says quite clearly and quite plainly:

Shall cease to be Indian reserve lands.

Is that placed in there to cover farms off the reserve? I see the reason if it is to cover one farm situated six miles, say, from the reserve, which is still reserve land. As a matter of fact, the man is trying to get a V.L.A. loan and he cannot get it because it is reserve land, at least, it would be considered reserve land as far as the V.L.A. is concerned.

Now, if it is only for that purpose I can see no objection but if it is a question of pinpointing reserves with whites I certainly will object.

Hon. Mr. HARRIS: It certainly is not the intention to try to solicit Indians to have lands allotted to them, become enfranchised and then wait for ten years to sell their land to non-Indians, but this is one of the most difficult things that we have had to decide. One of the representations made to the investigating committee by Brigadier Martin was on this very point. It is borne out by experience that you penalize the Indian by saying to him no matter how much you cultivate your land, no matter how much you improve your land, you may not get its value if you become enfranchised.

Mr. CHARLTON: Unless you become enfranchised?

Hon. Mr. HARRIS: No, if you become enfranchised; because, upon enfranchisement without these sections you are restricted in your sale value to an Indian on your reserve and then, under those conditions, the market value of

your land and your improvements would probably not have a true valuation. Martin recommended that we should remove this penalty on the Indian seeking to become enfranchised. We gave a good deal of consideration to it. The provision is in the present Act in such a way that there is no restriction on the sale whatever. The land may be allotted to an Indian upon enfranchisement on a reserve as has been done on occasion—though not very often. We felt that to protect the band council and the other members of the band it would be desirable to insert a ten year waiting period in subsection 3 so that there would not be anyone seeking enfranchisement just for the purpose of selling land quickly, getting money, and leaving the reserve.

Nevertheless, we felt on the other hand that we could not refuse an Indian the right to profit by his labour, else we would be imposing upon him a restriction which is not imposed upon any other person in Canada.

Mr. NOSEWORTHY: In other words, when this is declared to be no longer Indian reserve land the enfranchised Indian may continue to live on it for ten years, after which he may get a grant.

Hon. Mr. HARRIS: Yes.

Mr. NOSEWORTHY: But what are the possibilities once it is declared to be no longer Indian reserve land? What is there to prevent it from being sold?

Hon. Mr. HARRIS: Well, he does not get the letters patent until the ten year period is over.

Mr. CHARLTON: After the ten year period?

Hon. Mr. HARRIS: There is no restriction after the ten year period.

Mr. CHARLTON: I would like to ask the minister this question, Mr. Chairman. Is it the thought of the minister in certain cases where he intends to do this that there will be no longer a reserve in those particular places in ten years?

Hon. Mr. HARRIS: Well, based on experience in the past the numbers who will be applying under this provision will be three or four or five maybe every five years.

Mr. HARKNESS: What has been the experience in getting the consent of the band?

Hon. Mr. HARRIS: The present Act does not require the consent of the band. We have inserted that qualification.

Mr. CHARLTON: This does not require the consent of the band.

Hon. Mr. HARRIS: It requires the consent of the band in the first instance to get the land allotted.

Mr. CHARLTON: Yes, but not as an individual?

Hon. Mr. HARRIS: Yes, as an individual.

Mr. CHARLTON: Not as a band?

Hon. Mr. HARRIS: Yes, as a band.

Mr. CHARLTON: For that individual—not as a band? You are not going to enfranchise the whole band?

Hon. Mr. HARRIS: We are talking about land allotment—if you are talking about enfranchisement that is something else.

Mr. CHARLTON: He is not being enfranchised first; he has to be granted the land first.

Hon. Mr. HARRIS: By the band council.

Mr. CHARLTON: If he becomes enfranchised?

Hon. Mr. HARRIS: Right.

Mr. CHARLTON: After living on it ten years he is allowed to sell it to anyone?

Hon. Mr. HARRIS: Yes.

Mr. CHARLTON: What I am trying to get at is this is an individual case on a reserve and not the whole reserve?

Hon. Mr. HARRIS: Yes, this is an individual Indian.

Mr. CHARLTON: What is the object other than the fact of giving an Indian a choice of sale wherever he wished? What other object is there of putting this section in?

Hon. Mr. HARRIS: Just to assert the right of every person to own something in this country that he can claim as his own.

Mr. CHARLTON: The Indians themselves did not object to this?

Hon. Mr. HARRIS: As I say there was a preliminary discussion in which three persons expressed their disapproval to it. When they saw the mechanics of it they did not go any further. It was very fully gone into.

Mr. NOSEWORTHY: That can only be done with the consent of the band?

Hon. Mr. HARRIS: Initially. The person gets his land allotted to him in the first instance only by consent of the band and the minister.

Mr. NOSEWORTHY: This allotment is not any different from any other?

Hon. Mr. HARRIS: That is true.

Mr. NOSEWORTHY: It is just the same as any other allotment?

Hon. Mr. HARRIS: Right.

Mr. NOSEWORTHY: It is no special case?

Hon. Mr. HARRIS: Yes.

Mr. NOSEWORTHY: The Governor in Council may, with the consent of the band, by order declare this land to be no longer part of the reserve. The consent of the band has to be obtained before that can be declared as non-Indian reserve land?

Hon. Mr. HARRIS: That is right.

Mr. NOSEWORTHY: Under 110(2)?

Hon. Mr. HARRIS: That is right.

Mr. NOSEWORTHY: It could over a considerable period of years wipe out an Indian reserve entirely?

Hon. Mr. HARRIS: Granted, it could—by action of the band council.

The CHAIRMAN: Shall we go on to subsection 2?

Mr. CHARLTON: No. The Six Nations reserve is as you know along the north side of the Grand river—a very narrow strip north of the Grand river. Is it your intention with the consent of those people living on the north side of the Grand river that you could enfranchise all those Indians and grant all that land in one block?

Hon. Mr. HARRIS: We could if they applied for enfranchisement and the band council consented.

Mr. CHARLTON: If the group of them applied or as individuals?

Hon. Mr. HARRIS: Yes.

Mr. CHARLTON: The same would apply exactly to a pinpoint farm on a reserve any place?

Hon. Mr. HARRIS: If the land has been allotted in the first instance.

Mr. CHARLTON: Yes, well most of the land has been allotted.

Hon. Mr. HARRIS: No, it has not—well, on the Six Nations yes.

Mr. CHARLTON: On this particular reserve I am talking about now.

Hon. Mr. HARRIS: Yes.

Mr. CHARLTON: I do not think it is the wish of those Indians to have that done—quite sincerely—because I have talked to many of them. It is not their wish to have their reserves pinpointed with whites. I am sure of that.

Hon. Mr. HARRIS: If they do not want to do that the band council does not have to give its consent.

Mr. NOSEWORTHY: Your band council in some instances will consist of the chief and one representative as a quorum—that is on a small reserve.

Hon. Mr. HARRIS: That is right.

Mr. NOSEWORTHY: Who, under the influence of the Indian agent, will give any opinion that agent wants.

Hon. Mr. HARRIS: I see you are not familiar with Indian Affairs.

Mr. NOSEWORTHY: Well, from what I read about Indians and hear about Indians—

Hon. Mr. HARRIS: You do not believe everything you hear.

Mr. NOSEWORTHY: That is the point of the whole of Indian Affairs—the influence of the agent on the reserve.

Hon. Mr. HARRIS: If you have patience and go into these cases you will find that nine times out of ten long before you get to the root of the matter you will find that the Indian decides the agent is his friend and not the monster that somebody has told you he was in the first instance.

Mr. BLACKMORE: It seems to me that there is a flaw somewhere or other in the reasoning. I have been trying to trace it out. The minister as I understand it lays this down as a possible safeguard and says now the band had to allot the Indian the land in the first place?

Hon. Mr. HARRIS: Right.

Mr. BLACKMORE: It is true, but how did the band know when they allotted that Indian the land that he would become enfranchised?

Hon. Mr. HARRIS: They did not know because he probably had not indicated his intention of becoming enfranchised.

Mr. BLACKMORE: Now, then, when it comes to a sale of this land, its disposal is dependent on that land having been allotted to him by the band council and the sale being made with the consent of the band council.

Hon. Mr. HARRIS: That is right.

Mr. BLACKMORE: That is done with the consent of the band council.

Hon. Mr. HARRIS: With the consent of the band council. Because, any interest in lands and improvements on an Indian reserve of which the enfranchised Indian had formerly been in lawful possession or over which he exercised rights of ownership may be disposed of by him by gift or by sale only with the consent of the band council.

Mr. CHARLTON: I did not take that to mean that it applied to land, let us say on the edge of a reserve, but rather to land within the reserve itself. There is a principle here of forcing the enfranchised Indian to dispose of his land in the reserve, and it might also apply to land outside the reserve, and I do not think that is right.

Hon. Mr. HARRIS: That is a matter of opinion and no doubt the department or any future minister will bear in mind the general desire not to exercise that power in every case, but to protect the band as a band. If they do not want to have their reserves dealt with in this manner the band council does not have to give its consent.

Mr. CHARLTON: It is conceivable that the band council might not want to see that land sold, they might be more inclined not to do that.

Hon. Mr. HARRIS: Why should not the Indian have the same right with respect to property as you and I have?

Mr. CHARLTON: Yes, but this takes in the whole reserve.

Hon. Mr. HARRIS: Why should not the individual Indian do what he wants to do with his land, providing that the band council does not restrict him?

Mr. CHARLTON: But, does it restrict the Indian? There are cases where there are farms far away from the reserve.

Hon. Mr. HARRIS: I know it.

Mr. CHARLTON: There is one case of which I know where the individual wanted to get his franchise and the band council wanted to keep that property in the reserve. That is the point they are arguing about.

Hon. Mr. HARRIS: Without offence let me ask you this, Mr. Charlton; why should you impose your opinion as to what is to be the advantage of keeping that land against that of the band council?

The CHAIRMAN: I thought in this committee that we were trying to get more freedom for the Indian, to give the Indian more freedom. We are not trying to restrict them, we are trying to give them every opportunity to let them work it out for themselves. You have been on the committee for the last four years and you know that the feeling of the committee has been to help the Indian to help himself.

Mr. CHARLTON: No one wants to do that more than I do.

The CHAIRMAN: Let's do that then.

Mr. NOSEWORTHY: While that is true, pretty nearly every other clause in this Act leaves the minister the final authority in Indian matters on the ground that the Indians are not yet advanced sufficiently to assume control in this matter of real estate, yet we let the Indian sell his property if he wants to.

Mr. APPLEWHAITE: No, the Governor in Council has authorized it.

Mr. CHARLTON: On the ground that the Indian cannot get the band's consent, the matter of final action rests with the minister.

Mr. FULTON: I am sorry if I missed something that has gone before, and if my question has been fully answered I will not press it. I am wondering if I am right in my interpretation of Section 110 (1), that an Indian who has been enfranchised may sell his land or dispose of it by gift or private sale to a person who is not an Indian?

Hon. Mr. HARRIS: We have gone over that, Mr. Fulton, and the explanation was made, that he could not dispose of it to anyone outside of the Indian reserve. I thought we had made that position clear. We will refer the point to Justice, and see if it can be made clearer.

Mr. FULTON: Is there another section which refers to that?

Hon. Mr. HARRIS: Yes, Section 20.

Mr. BLACKMORE: I would like to make this statement, that I think the Indian reserves were wisely set aside as retreats so that Indians would be able to go there in case of need, and consequently I have always been strongly opposed to the disposal of any of the Indian reserves.

Hon. Mr. HARRIS: Even if they want to?

Mr. BLACKMORE: Even if they want to. The difficulty as I see it is this, and I call on the members to witness this fact, and I think they will all agree with me, that in certain circumstances Indians will do very very foolish things, they will barter away their goods like a mess of pottage. I have seen that happen over and over again. Now, if the Indians wanted to dispose of the property on their reserves, if they wanted to surrender it, I would feel much safer if the government would say something like this: let them surrender it back to the

government or let the government buy this land and then we will have it and if in future the Indians need it it will be there for them. Now, it seems to me that we are in a similar position in respect to this land right here. The government and the people of Canada generally speaking are treating the Indians in good faith. Why should not the government say to the Indians: we will buy the land from you if you want to dispose of it; it will not cost so very much and then the land can be kept for a reserve.

The CHAIRMAN: Well, I want to bring this matter to the attention of the committee. I know of a case in my constituency or just south of it, where Indians have become enfranchised and have received their commutation as resident from that reserve and have become integrated into the population and have become leading citizens in the cities of Detroit and Windsor. I might refer to one who became a lawyer and a member of the provincial house, and others have taken a leading part in the community.

Mr. BLACKMORE: Well now, in that happy condition we are glad to be assured that the Indians of Canada would be capable of doing such delightful things; and that being the case I would not press my objection. Certain tribes of Indians, are able to do things as citizens, we know that perfectly well. They worked out all right in the case of cultured Indians who equipped themselves to take their places as citizens and even to qualify themselves for office. However, I certainly think we need to be fair to the Indians.

Hon. Mr. HARRIS: Under this section we are dealing with people who have a greatly different standard of living and outlook, let us say as between the Indian of Ontario and Indians of Alberta, for instance; and we also have to consider the fact that the operation of land tenure in Ontario is different from what it is in Alberta. It is conceivable that one could in Ontario encourage the Indian to take advantage of the franchise and no harm would come to him, to the band or to anyone; but the situation in Alberta is different where many of the reserves have not even been allotted yet, and it would be highly unlikely that this power of the Governor in Council would be exercised in this area where the idea of ownership and security of tenure and matters of that kind have not yet taken root in the minds of the Indians.

Now, all I can say is that the Governor in Council is not seeking, as Mr. Charlton has very properly questioned, to go about under this section, trying to get people to become enfranchised for this purpose. On the other hand, where the development of people has led to that point of desire, we think it is the very time when they should have the power to exercise it.

Mr. BLACKMORE: I would be inclined to agree with the minister. I have also stated that the absolute over-riding power must be with the minister because we know that we cannot possibly tell what might occur. Nevertheless, I think it is well that the minister has to guide him and protect him the wording in the Act. There are times when a minister needs protection from forces which may be brought against him. A good example is the one which Mr. Hatfield referred to. But if the minister has the wording in the Act, then with the committee and with the Parliament of Canada behind him, he could exercise that discretion more freely and authoritatively.

Hon. Mr. HARRIS: That is why we have the Governor in Council here and not the minister.

Mr. HATFIELD: In what provinces are Indians now allotted land?

Hon. Mr. HARRIS: What is that again?

Mr. MACKAY: The allotments apply to all provinces. But the reserve of all the acreage in each and every reserve has not been allotted.

Mr. HATFIELD: Are any allotments made in New Brunswick?

Mr. MACKAY: Oh, yes.

Mr. HATFIELD: To individual Indians?

Mr. MACKAY: Yes.

Mr. HATFIELD: Individual Indians on reserves?

Mr. MACKAY: Oh, yes.

Mr. HATFIELD: And they have received grants of that land?

Mr. MACKAY: Well, if they have not received grants, they will receive them in time. They would have what is called a certificate of possession.

Mr. HATFIELD: What was it the minister said about allotments being made in Alberta?

Hon. Mr. HARRIS: I said that the idea of allotment had not taken root.

Mr. FULTON: I would like it to be quite clear that the provisions of this section and the intent that is indicated be that the Indian who becomes enfranchised shall not be permitted to live upon what was formerly reserve lands without the consent of the band council. In other words, that he cannot live on an Indian reserve after enfranchisement without the consent of the band council.

Hon. Mr. HARRIS: I do not think this section says that. It says that the lands which he has had allotted to him may, upon enfranchisement by the Governor in Council, with the consent of band council, be declared to be non-reserve lands that he might live on them thereafter.

Mr. FULTON: But until the band council consents, he cannot live on them after 30 days.

Hon. Mr. HARRIS: That is right. I agree.

Mr. FULTON: That is the effect of this whole thing.

The CHAIRMAN: Subsection (2).

Carried.

Subsection (3).

Carried.

Subsection (4).

Mr. CHARLTON: Subsection (4) was struck out. In effect it made it necessary for that chap, even after living on it for ten years, to sell to an Indian. That was the section where the land was actually taken out of the reserve.

Hon. Mr. HARRIS: No. Lands are taken out of the reserve by action of the Governor in Council and band council under subsection (2) and if you strike out subsection (4), you would make it possible to grant letters patent to the Indian, without waiting for ten years. There would be no point in striking out subsection (4).

The CHAIRMAN: Subsection (4).

Carried.

Section 111.

111. (1) Where the Minister reports that a band has applied for enfranchisement, and has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, and in his opinion the band is capable of managing its own affairs as a municipality or part of a municipality, the Governor in Council may by order approve the plan, declare that all the members of the band are enfranchised, either as of the date of the order or such later date as may be fixed in the order, and may make regulations for carrying the plan and the provisions of this section into effect.

(2) An order for enfranchisement may not be made under subsection one unless more than fifty per cent of the electors of the band signify, at a meeting of the band called for the purpose, their willingness to become enfranchised under this section, and their approval of the plan.

(3) The Governor in Council may, for the purpose of giving effect to this section, authorize the Minister to enter into an agreement with a province or a municipality, or both, upon such terms as may be agreed upon by the Minister and the province or municipality, or both.

(4) Without restricting the generality of subsection three, an agreement made thereunder may provide for financial assistance to be given to the province or the municipality or both to assist in the support of indigent, infirm or aged persons to whom the agreement applies, and such financial assistance, or any part thereof, shall, if the Minister so directs, be paid out of moneys of the band, and any such financial assistance not paid out of moneys of the band shall be paid out of moneys appropriated by Parliament.

Subsection (1), enfranchisement of band.

Carried.

Subsection (2), majority vote required.

Carried.

The Indian Association of Alberta contended that it does not require a large enough majority of the electors of the band.

Hon. Mr. HARRIS: We had that discussed at the conference and it was suggested by Mr. Laurie that it should read 75 per cent instead of 50 per cent. That opinion was also held by Chief Scow of British Columbia.

Mr. HARKNESS: I think this is one of the occasions on which this bare majority of the band should be increased. There was some discussion before in connection with some other sections. There was also suggested the possibility of increasing the majority required to a two-thirds majority. This is certainly one section where I think that should be done. I do not think a bare majority of the band who happen to be present should be able to vote. It might in fact be actually a minority of the band. Nevertheless in previous sections it provides that if a majority of the electors are not present on the first vote, then a second vote can be taken and a majority of the people present voting on the second vote can carry the question.

Hon. Mr. HARRIS: That only applies to the surrender clause. It does not apply to this clause. You require here 50 per cent of the electors, that is, of those persons who are entitled to vote.

Mr. HARKNESS: All right. But if we put it on that basis, I do not think that 51 per cent of the electors of a band should be able to say what should be done on the reserve. A minority, which might well be almost half of the members of the band would not be protected. In other words, it does not seem to me to be reasonable that 51 per cent or 50 per cent of the band should be able to remove by compulsion the rest of the band from their Indian status against their wishes. I feel that the minority should get some protection in a case of that kind.

Mr. GIBSON: Would you consider 60 per cent?

Hon. Mr. HARRIS: No, because it would probably be beyond the realm of possibility for any band to exercise their powers under section 111, if you move it over 50 per cent of the electors.

Mr. HARKNESS: You do not want any protection for the minority.

Hon. Mr. HARRIS: That is not so and you know it.

Mr. HARKNESS: No. I think that is essentially the situation.

Hon. Mr. HARRIS: If you have a band vote, you require 50 per cent of the electors to support the proposal for enfranchisement. The minority which is opposed to it will not be very great, because you will not be getting a 100 per cent vote. You won't get a 50 per cent vote and a 49 per cent vote, or a 49 per cent vote and a 48 per cent vote. It would be a remarkable occasion in Indian affairs to have any such outcome. So, in order to get a 48 per cent of the electors to support it, you would require to have about 70-20 of those voting.

Mr. HARKNESS: I think you are taking too much for granted.

Hon. Mr. HARRIS: When you have done that, the action of enfranchisement follows, not upon the vote, but upon the decision of the Governor in Council, after studying the case, including the vote itself.

Now then, we do not want to hamstring what would be not just 50 per cent of those voting, but more than one-half of all the electors, in saying to them that we won't consider enfranchisement because we have not got 75 per cent.

Neither would we—and I doubt very much if any responsible minister would—even when faced with a vote of 49 per cent to 48 per cent, go ahead with these proceedings.

If it should happen that it did occur, we would then come to the question of protection of a minority. The protection of the minority consists, of course, in the division of the band funds and of the band property. They do not lose anything except the right of living on that particular reserve.

Mr. HARKNESS: They will lose their status as Indians.

Hon. Mr. HARRIS: They will lose the status of Indians, but subject of course to the wisdom of the department which, as I have said, would probably reconstitute them in another band, if it appeared to be desirable to do so. We are only arguing, I agree, about something which is most unusual. It has only happened once, I think, in the history of the Indian Act, that this section has been used. We have no experience to go on.

Mr. BLACKMORE: Have these provisions been in the previous Indian Act?

Hon. Mr. HARRIS: Oh, yes.

Mr. BLACKMORE: They are substantially the same?

Hon. Mr. HARRIS: Yes.

Mr. BLACKMORE: You are not taking any steps forward in this connection?

The CHAIRMAN: Subsection (2), shall it carry?

Some Hon. MEMBERS: No, no.

Mr. CHARLTON: The minority group voting against it would be moved to another band?

Hon. Mr. HARRIS: I am only speculating as to what some future minister might do. I would doubt if there was a very close vote that any action would be taken because it would be evident that there would be feeling stirred up and that no good purpose would be gained by going ahead; but if it appeared desirable to do so, to settle the dispute which would be going on, that the band funds and the band property would be divided in common and those who were opposed to losing their Indian status would like to continue the band, I think some arrangement of that kind could be made.

Mr. BLACKMORE: In the meantime the whole of the reserve would be surrendered just by the vote of fifty per cent?

Hon. Mr. HARRIS: That need not follow, particularly if your minority is a strong one, that is in numbers; an arrangement no doubt could be worked if they wanted to continue as Indians by a division of the reserve, or some such an arrangement could be reached.

Mr. HARKNESS: I spite of all that you have said, it is a well established democratic procedure that when something in the nature of constitutional changes is required that more than a fifty per cent vote in most cases is necessary. Our greatest example, of course, is in the United States, where for constitutional amendments they must have two-thirds of the states ratifying them, two-thirds of the senate, in some cases, and so forth; and what you said about people not being there to vote applies equally well. If the state does not want to take a vote on that, all right, it has not ratified it. I would think that same principle should apply in this particular case and that at least a two-thirds majority should be required before action of that kind, which is a basic matter to the Indians, should be taken.

The CHAIRMAN: You do not think the majority should rule?

Mr. HARKNESS: I would like to move an amendment that this fifty per cent be struck out and there be substituted two-thirds.

Hon. Mr. HARRIS: You are quite clear that we are talking about electors in this?

Mr. HARKNESS: I am talking about electors.

Hon. Mr. HARRIS: Do you think you will get two-thirds of the electors to vote, electors, not voters?

Mr. BLACKMORE: By electors you mean the whole qualified electorate.

The CHAIRMAN: As an illustration, in the case here if you have one hundred electors you would get a meeting probably of, say, sixty. If you get sixty of the electors at any meeting you are doing very well, but of that sixty—and, by the way, all those opposing will be at the meeting, you may be sure of that—you have got to have out of that sixty at least fifty-one who will vote in favour.

Mr. NOSEWORTHY: Surely on a question involving the very existence of a reserve, or the discontinuance of a reserve, the Indians would be interested enough to come out and express an opinion on it.

Hon. Mr. HARRIS: If they did you still have to get fifty-one per cent of the total electors who will vote for it, not fifty-one per cent of the voters.

Mr. APPLEWHAITE: I have a certain amount of sympathy for the idea which Mr. Harkness has in the back of his mind but I could not support that amendment because I do not think we are entitled to allow a backward minority to hold back a forward looking majority in any event.

The CHAIRMAN: In other words, you believe that the principle of majority rule should apply?

Mr. APPLEWHAITE: I do think Mr. Harkness made a good point in bringing up the question of the status of the minority and I hope that the minister and the department, should the occasion arise, will follow it up.

Mr. FULTON: If this were a case where there was no appreciable measure of controversy amongst the Indians I would think that Mr. Applewhaite's argument has some force, but the Indians themselves are disagreed on the question of enfranchisement. I think the ordinary safeguards of enfranchisement, the ordinary safeguards of the rights of the minority should apply; and as Mr. Harkness said, in ordinary cases where constitutional rights and privileges are involved you require much more than the bare majority of the electors to express consent. In many cases it is as high as seventy-five per cent.

The CHAIRMAN: Of those present at a meeting—

Mr. FULTON: No, those of the class affected whose rights are apt to be interfered with. Seventy-five per cent of them in any case is required. I do not think two-thirds is any too high to put it at. I wonder if the minister or you, Mr. Chairman—you have told us this is not a change from the former Act—could tell us in what section you would find a similar provision in the old Act?

Hon. Mr. HARRIS: Yes, in a moment. I do not want to be argumentative about it but I have had no experience in any municipal, provincial or federal field where seventy-five per cent of the electors' approval of any given course is required. If you have I will be glad to learn about it.

Mr. FULTON: I am not ready to cite the specific bylaws, but I know there are generally two-thirds.

Mr. GIBSON: Sixty per cent of the voters, of those who vote, is usually the case.

Mr. APPLEWHAITE: Under the old Act, it was a majority of the male electors at a meeting. Section 110.

Mr. HARKNESS: In connection with what Mr. Applewhaite said about making this two-thirds, possibly prejudicing the more forward looking members of the band, that could not be the case because these people can become enfranchised individually if they wish to do so, and under the provisions we have just passed they can get possession of their land, so the people who want to become enfranchised are not going to be prejudiced in the least by having this two-thirds majority in. All that it is going to do is protect the minority.

Hon. Mr. HARRIS: You have put your finger on the weakness in your argument. There is a penalty on the Indian becoming enfranchised individually because he is then not entitled under the Act to his full rights of membership in the band. If the majority becomes enfranchised the individual is entitled to more than he would be by becoming enfranchised individually.

Mr. HARKNESS: Why? He is entitled to his land under this provision we just passed. He is entitled to a per capita share of the funds of the band.

Hon. Mr. HARRIS: He gets nothing out of the land that is held in common, or anything out of leases which may be quite valuable.

Mr. APPLEWHAITE: When they enfranchise a band they take their common land with them, it becomes then the property of the municipality.

Mr. FULTON: Mr. Chairman, there is no parallel between this section and section 110 which has been referred to by Mr. Applewhaite. Section 110 refers to enfranchisement of individual Indians, section 110 of the old Act.

Mr. APPLEWHAITE: Or upon the application of a band.

Mr. FULTON: Yes, but for what? For the enfranchisement of an Indian.

Mr. APPLEWHAITE: It does not say so.

Mr. FULTON: If you read it over I think you will find that it does. You will find that it refers to a member of a band and a member of the band to which the Indian or Indians under investigation belong, to make enquiry and report as to the fitness of any Indian or Indians to be enfranchised.

Mr. APPLEWHAITE: On the application of an Indian or that of a band.

Mr. FULTON: Yes, but an application for what?

Mr. APPLEWHAITE: Of an Indian.

Hon. Mr. HARRIS: No, of any Indian or Indians.

Mr. FULTON: Not of a band.

Mr. APPLEWHAITE: Well, that is the one they are doing it under now.

Mr. GIBSON: Question?

The CHAIRMAN: Are you ready for the question on subsection (2)? What we are trying for is the benefit of the Indian. If you can show us where there is greater benefit to the Indians I would think this committee would be agreeable but we do not, or at least I do not, feel it is going to be of any benefit to the Indian to say that the minority shall hold up progress.

Mr. BLACKMORE: Of course, Mr. Chairman, we are all trying to project ourselves into the future, the nature of which it is impossible for us to foretell. I

am just wondering, however, if you could give us the number of cases for enfranchisement that have occurred under the old Act, say, within the last twenty years or thirty years?

Hon. Mr. HARRIS: Well there are two—there is the one the chairman mentioned in southwestern Ontario seventy years ago, and there is the other more recent, in fact very recent, in the case of the Metlakatla Band of British Columbia. In that case it happened to be a unanimous vote.

Mr. BLACKMORE: Have the results in both cases been happy?

Hon. Mr. HARRIS: The Metlakatla one has not been completed in the sense that complete agreement has not been negotiated with the provincial government.

Mr. BLACKMORE: Are those the only two cases in the last twenty years?

The CHAIRMAN: The other one has been very satisfactory.

Mr. BLACKMORE: Were there some before that?

Hon. Mr. HARRIS: Those are the only two cases.

Mr. BLACKMORE: The only two in all history?

Hon. Mr. HARRIS: Of a band, as such.

The CHAIRMAN: Are you ready for the question on subsection (2)?

Mr. FULTON: I think Mr. Harkness moved an amendment.

The CHAIRMAN: Have you got it in writing?

Mr. HARKNESS: No, I have not got it in writing.

The CHAIRMAN: Do you want to change it to two-thirds?

Mr. HARKNESS: Yes, my amendment is "that 'fifty per cent' should be struck out and substituted therefor shall be the words 'two-thirds.'"

The CHAIRMAN: Are you ready for the question? All those in favour of the amendment?

Against?

I declare the amendment lost.

Mr. BLACKMORE: Mr. Chairman, I wonder if it would be in order to ask—

The CHAIRMAN: I want it on record that I am opposed to the amendment.

Mr. FULTON: I think that is obvious enough.

Mr. BLACKMORE: I wonder if it would be in order to ask that the vote be recorded.

The CHAIRMAN: If you like. (Amendment lost on recorded vote.)

I have declared the amendment lost. Shall the section 111 (2) carry?
Carried.

Mr. FULTON: On division.

The CHAIRMAN: Section 111 (3), agreements with provinces?
Carried.

Section 111 (4), financial assistance.

Mr. HATFIELD: Mr. Chairman, I would like to ask the director a question. I do not know whether it comes under this clause or not but what provision is there for Indians to go into public or private hospitals?

Mr. MACKAY: Well, Mr. Hatfield, an arrangement is really made by the Indian medical services of the Department of National Health and Welfare. The matter of Indian hospitalization does not come under the Indian Affairs branch.

Mr. HATFIELD: What is that?

The CHAIRMAN: A little louder please?

Mr. MACKAY: Admission of Indians to hospital is the responsibility of the Indian medical services of the Department of National Health and Welfare.

Mr. HATFIELD: The department does not have anything to do with it?

Mr. MACKAY: The Indian Affairs branch has nothing to do with that.

Mr. HATFIELD: Do they set the prices they pay?

Mr. MACKAY: Of course, Mr. Hatfield, I think the rates vary across Canada. They are greater in some provinces than in others.

Mr. HATFIELD: It is under the Department of Health?

Mr. MACKAY: Yes.

The CHAIRMAN: Shall section 111 (4) carry?

Carried.

Section 112?

112. (1) The Minister may appoint a committee to inquire into and report upon the desirability of enfranchising within the meaning of this Act an Indian or a band, whether or not the Indian or the band has applied for enfranchisement.

(2) A committee appointed under subsection one shall consist of

- (a) a judge or retired judge of a superior, surrogate district or county court,
- (b) an officer of the Department, and
- (c) a member of the band to be appointed by the council of the band, but if no appointment is made by the council of the band within thirty days after a request therefor is sent by the Minister to the band, a member of the band appointed by the Minister.

(3) Where the committee or a majority thereof reports

- (a) in the case of an Indian, that in its opinion the Indian is qualified under paragraphs (a), (b) and (c) of subsection one of section one hundred and eight to be enfranchised,
- (b) in the case of a band, that the band has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, and, in its opinion the band is capable of managing its own affairs as a municipality or part of a municipality, and
- (c) that it is desirable that the Indian or the band, as the case may be, should be enfranchised,

the report, if approved by the Minister, shall be deemed to be an application for enfranchisement by the Indian or by the band and shall be dealt with as such in accordance with this Act.

(4) An Indian or the members of a band shall not be enfranchised under this section contrary to the terms of any treaty, agreement or undertaking between a band and His Majesty that is applicable.

The CHAIRMAN: Section 112 (1)?

Hon. Mr. HARRIS: There were objections to 112.

Mr. BLACKMORE: Would the minister comment?

Hon. Mr. HARRIS: The Hurons of Lorette report that they believe in voluntary enfranchisement only.

The Queen Victoria Protective Treaty Association are opposed to involuntary enfranchisement.

The Sarcee Indian band are opposed to this section.

The Indian Association of Alberta is opposed to this section.

At the discussion at the conference as you will see at the bottom of page 2, section 11: "All representatives were opposed to section 112 which is the section

dealing with enfranchisement after enquiry and it was drawn to the attention of the conference opposition to this section had been recorded in a number of briefs submitted to the minister. Now this is the clause which is known as compulsory enfranchisement. It gives the minister authority with certain safeguards to bring about the enfranchisement of an Indian or of a band. The procedure set out is that the minister may appoint a committee consisting of a judge, or a retired judge of a certain standard, an officer of the department, a member of the band, to inquire into the matter of whether an Indian or band should be enfranchised and if under the circumstances set out in subsection (3) a report is made, then the minister may recommend that the enfranchise must be proceeded with.

The saving clause, aside from all the safeguards I have mentioned, is subsection (4) which provides that the Indian or members of a band shall not be enfranchised under this section contrary to the terms of any treaty, agreement or undertaking between a band and His Majesty that is applicable.

Mr. DIEFENBAKER: What were the circumstances under which this clause was added, is this something new?

Hon. Mr. HARRIS: There is nothing added in this section that is not in the present Act.

Mr. DIEFENBAKER: I have no objection to it. After all, we are re-writing the present Act but this is new to me and this is one of the things that they are very strongly against.

Hon. Mr. HARRIS: Well, the Indians generally feel that, aside from any suggestion of compulsion which may be offensive to some of them, that they have certain privileges which could be denied to them by the application of this section; that is, that the Governor in Council could enfranchise them and in effect take away from them the advantages of the Indian Act. We have a most inconsistent result, that some Indians claim that the Indian Act is something which is detrimental to their interest while at the same time they protest that we cannot take it away from them by action under this section.

Mr. DIEFENBAKER: Under this clause?

Hon. Mr. HARRIS: Yes, under subsection 4, which was added after the original section was passed.

Mr. DIEFENBAKER: Yes.

Hon. Mr. HARRIS: No one has attempted to use this section at any time since it has been in the Act, and the subsection was added to give the Indian all the protection he conceivably could have in justice under the treaty.

Mr. DIEFENBAKER: Well then, is not the effect of that subsection 4 more or less meaningless because any treaties that were made prior to 1867 certainly would have nothing in them regarding an undertaking with reference to enfranchisement.

Mr. HATFIELD: But they do not recognize those treaties.

Mr. DIEFENBAKER: What were the impelling motives that induced the incorporation of this section in the Indian Act?

Hon. Mr. HARRIS: When I say, this is relatively new in the Indian Act, it is not new in Indian administration. There were provisions of this kind years ago in the Indian legislation because it has never been felt by any of the various governments concerned with the Indian Act that this business would continue forever. There must come a time when the Indians will be on their own in the same manner as non-Indians; and that if there is any authority, any power, which would make that determination, it would be that laid down in the Indian Act. There must be provision for settlement of the dispute as to whether the band or the individual is now capable of managing his own affairs; because governments,

I think, have taken the view that this is a good protection, that it was a good protection originally and made provisions for a progressive advancement, but it will have to have a conclusion sometime and that there must be a method of making that decision at that time.

Mr. DUFFENBAKER: Suppose there is a vote on the part of the band and 51 per cent of them voted against, even in a case like that the minister would be able to proceed and say, now regardless of your vote the time has come to give you full citizenship or to set aside your reserve because developments no longer justify your being on the reserve. Does that sum up the situation?

Hon. Mr. HARRIS: No, it does not sum up the situation.

Mr. CHARLTON: What is this committee to which the reference was made?

Hon. Mr. HARRIS: This committee consists of a judge, an officer of the department and a member of the band; and it provides that a majority of them may bring in a favourable report along the lines set out in this section.

Mr. CHARLTON: Certainly the members of the band would not have much to say with a judge and an officer of the department on the committee.

Hon. Mr. HARRIS: That would not be viewed with a great deal of enthusiasm by any member of the band who has chosen—

Mr. CHARLTON: Against the judge and a member of the department.

Hon. Mr. HARRIS: I do not think you should reflect on the judge.

Mr. CHARLTON: I did not mean to; but is that not the effect of this measure? I have been reading all the sections, 109, 110, 111, 112 and 113; and as I understand them they all have this one thing in common, that the minister has the right to say: We will appoint a judge, a member of the department and a member of the band council, and he can do that even in spite of their vote; he can say, in effect: In spite of your vote we are going to enfranchise you.

Hon. Mr. HARRIS: No, no, the minister can't say that. The minister can appoint a committee for the purpose of investigating to see if the Indians are now capable of managing their own affairs and thereby becoming enfranchised.

Mr. APPLEWHAITE: You are reflecting on the judge and the members of the department when you say that.

Mr. CHARLTON: That was not my intention.

Mr. APPLEWHAITE: Reading subsection 2, together with subsection 3 do those words "whether or not" have any application with respect to a band, because the committee has to report that a band has submitted a plan for the disposal of the property?

Hon. Mr. HARRIS: That was an error in drafting which I noticed a few days ago and I was going to draw it to your attention when we came to subsection 3. I thought we might let the discussion go ahead on the basis of the principle, but in fact under subsection (b) it should not read: in the case of a band that the band has submitted a plan for the disposal of its property. It will have to be changed to read something along this line—in the case of a band—that a plan has been submitted, because as it reads now the whole thing relies on the action of the band.

Mr. BRYCE: This is the clause that would be used in the case of the reserve at Edmundston where you have the city growing right around the reserve and they can't get water or sewage facilities; and then there certainly is the case at Sydney where you have a couple of acres right in the town of Sydney and the Indians have all left. Would this be the clause which would be used to determine that the Indians on such a reserve should become enfranchised? Am I right on that? Or am I wrong?

Hon. Mr. HARRIS: If they did it under either clause 110 or 111 this clause would not come into it. This clause would not be used except in the case where the committee which I referred to had arrived at a decision that the Indians had reached that point of proper advancement where they could accept the responsibility of the management of their own affairs free of the Indian Act.

Now, it has no particular significance to a band which might happen to be in the fortunate position of having a high value on its real estate, such as you mentioned. It could be used by them in any case.

Mr. DIEFENBAKER: Would the minister have any idea as to what treaties there are to which subsection (4) applies?

Hon. Mr. HARRIS: There is no answer to that, as I indicated a moment ago, because no one has tested this section in an action. All treaties could be said to apply, if they apply at all.

Mr. DIEFENBAKER: It says

(4) An Indian or the members of a band shall not be enfranchised under this section contrary to the terms of any treaty, agreement or undertaking between a band and His Majesty that is applicable.

Are there any such treaties?

Hon. Mr. HARRIS: I would not want to express an opinion which a court might ultimately have to pass on.

Mr. DIEFENBAKER: You are not expressing it as a judge yet, although some of the sections you are really administering as a judge. But are there no treaties that you know of which contain terms to the effect that they would be brought under section (4)?

Hon. Mr. HARRIS: There is no treaty which says that no action will be taken to enfranchise an Indian. But there may be a special provision in a treaty which could be interpreted along that line. However, I do not know of any at the moment.

Mr. HATFIELD: Subsection (4) brings up a question, Mr. Chairman.

The CHAIRMAN: Are we going to take them one by one, or are we going to jump all over the place?

Mr. HATFIELD: Subsection (4) brings up a question. How many treaties are there, and in what provinces does the department act upon them? You do not recognize treaties which were made before 1867 between the Indians and the King. What treaties do you recognize?

Hon. Mr. HARRIS: Well, for the third time—

The CHAIRMAN: Maybe Mr. Hatfield would like to go outside with Mr. Diefenbaker and Mr. Fulton and they could explain it to him.

Hon. Mr. HARRIS: For the third time, I did not use the language attributed to me. I said that the hunting and fishing clauses in the treaty you spoke of had been passed upon by the court in your province and it had been decided that they did not give to the Indians any particular hunting or fishing privileges.

Mr. HATFIELD: I cannot understand a department in Canada not recognizing a treaty which the United States recognizes. It was made before the United States became a country, yet they recognized a treaty signed by the King's representatives in the United States. And we must remember that there are Indians who go from Canada to the United States.

Hon. Mr. HARRIS: I have a hard enough time trying to administer the Indian Act as it is.

Mr. HATFIELD: How many provinces have treaties which you do recognize?

Hon. Mr. HARRIS: It is not by provinces. The treaties originally would be made with a group of Indians. Those Indians might live in parts of most provinces.

Mr. HATFIELD: Is there any part of a band in the province of Ontario which has a treaty?

Hon. Mr. HARRIS: Yes. There is quite an area of Ontario covered by what is known as the Robinson-Huron treaty which was made prior to 1867.

Mr. HATFIELD: Then you do recognize that treaty?

Hon. Mr. HARRIS: Yes and I said so the other day.

Mr. HATFIELD: Then why do you not recognize treaties in the Maritime Provinces?

Hon. Mr. HARRIS: Because the court did not uphold it.

Mr. FULTON: I asked the minister how an Indian or a band would go about enforcing a treaty under which they operated or lived? What procedure would they take? What recourse would there be to them to assert their rights under that treaty?

Hon. Mr. HARRIS: Such as the proviso in subsection (4)?

Mr. FULTON: Yes.

Hon. Mr. HARRIS: By issuing a writ for a declaration that their treaty was paramount to any other action the minister might take under that section.

Mr. DIEFENBAKER: I think they would ask for a writ of mandamus to compel the minister to do what he was endeavouring not to do.

The CHAIRMAN: Perhaps you had better take Mr. Hatfield outside and talk it over with him.

Mr. DIEFENBAKER: Mr. Hatfield mentioned a case, and you said that the court had held that the treaty was not binding in Nova Scotia. What was that case?

Hon. Mr. HARRIS: It was an action in 1920 or 1921 in which the Indians tried to assert special fishing privileges, having in mind a treaty initiated in the 1700's. There were certain provisions which stated that an Indian could continue his avocations and have a free market place in Halifax to dispose of his goods. But the court held that it did not confer on the Indians the right which they were trying to assert against the provincial game laws.

Mr. DIEFENBAKER: What court was that?

Hon. Mr. HARRIS: The trial court. The citation of the case is 1929 1 DLR 307.

Mr. DIEFENBAKER: The court of appeal of Alberta has decided that treaty rights are binding, and so has the court of appeal of Saskatchewan. It has decided the same.

Hon. Mr. HARRIS: I pointed out that it was regrettable that their court had held otherwise.

Mr. BLACKMORE: As a matter of interest, I am quite concerned, as I know the minister is, and the members of the committee, about these treaties which have been left on our doorstep, while we have been airing them.

Is there any Indian group in Canada that was definitely conquered, and whose lands were taken from them by right of conquest under the procedure of the King or Queen to make treaties. And if that is the case, then would not the mere fact that the Indians have always been treated as unconquered, would not that fact alone protect them under subsection (4)?

Hon. Mr. HARRIS: Well, whatever the status may have been, there is no question that they have the same rights they had under the treaties; and what rights they retain will no doubt be upheld by any court which passes on them. Now with respect to subsection (4) it can be argued that it means nothing. But on the other hand it would operate to protect the Indian if he had any right of protection whatever.

Mr. BLACKMORE: I think the chairman will recall an Indian who came down here from Manitoulin Island or some remote place.

The CHAIRMAN: Henry Johnson, was it not?

Mr. BLACKMORE: I think so. He had a medal which was a remarkable medal. It was about three and one-half inches across. What that medal stood for was astonishing. But he said it was no good, that it meant nothing. Although it had been given to him as a sort of guarantee, that is, it had been given to him and his successors in perpetuity as a sort of guarantee to certain rights, yet he could not assert those rights, although he had the medal.

The CHAIRMAN: I remember that.

Mr. BLACKMORE: I thought at the time that certainly there ought to be a housecleaning here in Canada with respect to all these things. We have got to face up to them. That is what is in the back of my mind.

The CHAIRMAN: Section 112, subsection (1).

Carried?

Mr. HATFIELD: In this case the court found that the representative of the King had no authority.

Hon. Mr. HARRIS: I would not want to interpret it. I will read it and write you a letter about it if you want me to.

Mr. HATFIELD: All right.

The CHAIRMAN: Section 112, subsection (1)..

Carried?

Mr. FULTON: Maybe we could shorten the procedure by having the whole clause called at once. Then, if there appeared to be a difference of opinion, we could have a recorded vote.

Hon. Mr. HARRIS: Allow me to interject that we will have to re-word paragraph (b) of subsection (3).

The CHAIRMAN: Subsection (1).

Carried.

Subsection (2).

Carried.

Subsection (3). Do you not consent to this amendment? Subsection (3) (b) will be amended in the case of a band.

Mr. FULTON: Will you call the vote again on subsection (1)? We were not quite clear; and on subsection (2). I would like to have a recorded vote on those two subsections.

The CHAIRMAN: Section 112, subsection (1). Can we not get this through now? Do you want a recorded vote on this?

Mr. FULTON: Yes. There is too much at stake.

The CHAIRMAN: You want a recorded vote?

Mr. FULTON: Yes, on subsection (1) and subsection (2).

The CHAIRMAN: We can have a recorded vote. It will take only a second or two. Section 112 subsection (1). All those in favour of the adoption of subsection (1) will please say "aye", when their names are called.

(Recorded vote taken).

Subsection (2)?

Mr. FULTON: There is a vote in the House, so I move that we adjourn, Mr. Chairman.

Hon. Mr. HARRIS: We shall come back here as soon as the vote is over.

The CHAIRMAN: Do you want to take the whole vote on it at once?

Mr. FULTON: I suggested that originally, but you refused.

The CHAIRMAN: We shall return when the vote has been completed in the House.

On resuming:

The CHAIRMAN: Come to order, gentlemen. We are dealing with section 112. We had voted on subsection (1). We are about to take a recorded vote on subsection (2). All of those in favour of the adoption of subsection (2) of section 112 will please say aye when their names are called.

Those not in favour please say nay.

I declare that subsection (2) of section 112 has been carried on a recorded vote.

Subsection (3). All those in favour of subsection (3) of section 112 will please say aye, those opposed, nay.

Before I declare this carried, may I say, that is, of course, subject to the amendment referred to by the minister which is to be made by the Department of Justice. You understand that.

Subsection (3) carried on a recorded vote subject to the amendment to be made by the Department of Justice.

Subsection (4). All those in favour of the adoption of section 112, subsection (4) will please say aye. Opposed, say nay.

I declare subsection (4) carried on a recorded vote.

As to the next meeting, would you leave it to the call of the chair? If we can arrange it in the morning of Thursday at 11.00 o'clock we will try our best.

Agreed.

The committee adjourned.

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SESSION 1951
HOUSE OF COMMONS

SPECIAL COMMITTEE

APPOINTED TO CONSIDER

BILL No. 79

AN ACT RESPECTING INDIANS

CHAIRMAN—MR. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

THURSDAY, APRIL 26, 1951

WITNESSES:

Hon. W. E. Harris, Minister of Citizenship and Immigration.

Mr. D. M. MacKay, Director, Indian Affairs Branch.

Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch.

Mr. L. L. Brown, Administrative Officer, Reserves and Trusts Division,
Indian Affairs Branch.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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1951

MINUTES OF PROCEEDINGS

THURSDAY, April 26, 1951.

The Special Committee appointed to consider Bill No. 79, An Act respecting Indians, met at 4.30 p.m. this day. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Applewhaite, Ashbourne, Blue, Boucher, Brown (*Essex West*), Charlton, Fulton, Gibson, Harkness, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Noseworthy, Simmons, Welbourn, White-side, Wood.

In attendance: Hon. W. E. Harris, Minister of Citizenship and Immigration; Mr. D. M. MacKay, Director, Mr. T. R. L. MacInnes, Secretary, and Mr. L. L. Brown, Administrative Officer, Reserves and Trusts Division, Indian Affairs Branch.

The Committee resumed consideration of Bill No. 79, An Act respecting Indians.

Clause 4, sub-clause (2). Mr. Charlton moved in amendment, that the words "by proclamation" after the word "may" in line 18 be struck out and the following substituted therefor:

with consent of the band,

The question being put, the amendment was negatived on division.

On motion of Mr. Welbourn:

Resolved:—That the following Clauses be amended and adopted as amended:

Clause 4, sub-clause (2), that after the word "thereof", in line 19, the following words be inserted:

except sections thirty-seven to forty-one.

Clause 9, sub-clause (3), that the following words be added at the end of the sub-clause:

or in the Province of Quebec, to the judge of the Superior Court for the district in which the band is situated or in which the person in respect of whom the protest was made, resides, or such other district as the Minister may designate.

Clause 9, sub-clause (4), that the first line be struck out and the following be substituted therefor:

the Judge of the county, district or Superior Court, as the case may be, shall

Clause 12, sub-clause (1), paragraph (a), sub-paragraph (iv), that the following words be inserted after the word "eleven" in line 13:

or entitled to be registered by virtue of paragraph (e) of section 11.

At 5.15 p.m. the members of the Committee were called to the House for a division.

The Committee resumed at 5.30 p.m.

Clause 15, sub-clause (4): that the word "may" in line 14 be changed to "shall".

Clause 32, sub-clause (1), that the words "The Northwest Territories or the Yukon Territory" be struck out and that the word "and" be inserted to replace the comma between "Saskatchewan" and "Alberta".

Clause 70, sub-clause (2), that the following words be inserted after the word "farms" in line 12,

pursuant to sub-section one.

Clause 77, sub-clause (2), paragraph (b), sub-paragraph (ii), that the word "months" in line 8 be changed to "meetings".

Clause 78, that lines 21, 22 and 23 be struck out and the following substituted therefor:

The Governor in Council may set aside the election of a chief or a councillor on the report of the Minister that he is satisfied that.

Clause 79, paragraph (c), that the words "the representative" in line 36 be deleted and the following substituted therefor: "any representative".

Clause 81, sub-clause (2), that the words "after it is made" in line 2 be struck out and the following substituted therefor:

after a copy thereof is forwarded to the Minister pursuant to sub-section (1).

Clause 91, sub-clause (1), that the following words be added after the word "chattels" in line 4:

but no such licence shall be issued to a full-time officer or employee in the Department.

Clause 105, paragraph (b), that the following words in line 14 be struck out "the prostitution of Indian women."

Clause 110, sub-clause (1), that the words "had formerly been", in line 28 be struck out and the word "was" substituted therefor; that after the word "ownership" in lines 29 and 30 the following be inserted "at the time of his enfranchisement", and that after the word "sale" in line 30, the following be inserted "to the band or another member of the band."

Clause 112, sub-clause (3), paragraph (b), that the paragraph be struck out and the following substituted:

in the case of a band, that in the opinion of the Committee the band is capable of managing its own affairs as a municipality or part of a municipality and that the committee has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, and

Clause 112, sub-clause (3), that the following words be added after the word "Act" in line 26:

except that in the case of a band, the provisions of sub-section two of section one hundred and eleven are not applicable.

Clause 114, that all the words in line 43 after the word "may" be struck out and that in paragraph (a) the following be inserted after the word "provide" in line 44:

for and make regulations with respect to
that there be inserted between Clauses 123 and 124 a new Clause as follows:

PRIOR GRANTS

Where, prior to the coming into force of this Act,

- (a) a reserve or portion of a reserve was released or surrendered to the Crown pursuant to Part I of the Indian Act, chapter ninety-eight of the Revised Statutes of Canada, 1927, or pursuant to the provisions of the statutes relating to the release or surrender of reserves in force at the time of release or surrender,
- (b) Letters Patent under the Great Seal of Canada were issued purporting to grant a reserve or portion of a reserve so released or surrendered, or any interest therein, to any person, and
- (c) the Letters Patent have not been declared void or inoperative by any Court of competent jurisdiction.

The Letters Patent shall, for all purposes, be deemed to have been issued at the date thereof under the direction of the Governor in Council.

At 6 p.m. the Committee adjourned to meet again on Monday, April 30, at 10.00 a.m.

E. W. INNES,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
APRIL 26, 1951.

The Special Committee appointed to consider the Indian Act met this day at 4.30 p.m. The Chairman, Mr. D. F. Brown, presided.

The CHAIRMAN: Gentlemen, come to order, please. There are several sections which were stood for amendment by the Justice department. The first section 4 (2).

4. (2) The Governor in Council may by proclamation declare that this Act or any portion thereof shall not apply to

(a) any Indians or any group or band of Indians, or

(b) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration.

Hon. Mr. HARRIS: Mr. Chairman, if I may, I would like to have someone move this. Perhaps I should give a short explanation first. It has been suggested that subsection (2) of section 4 could be used with respect to the surrender clauses which are 37 to 41. Section 37 reads: "Except where this Act otherwise provides," and we had in mind section 35 and section 110; but so there will be no doubt that we do not intend to use section 4 (2) to circumvent or set aside the very proper formalities we have provided for obtaining the consent of the band to surrender. Section 4 (2) should be amended so that it will read, "the Governor in Council may by proclamation declare that this Act or any portion thereof, except sections 37 to 41, shall not apply to," and so on.

The CHAIRMAN: Is that section 4?

Hon. Mr. HARRIS: Yes, "the Governor in Council may by proclamation declare that this Act or any portion thereof, except sections 37 to 41, shall not apply to—." We insert in subsection (2), "except sections 37 to 41" after the word "thereof" in the second line.

The CHAIRMAN: Now you have the motion before you. It is moved by Mr. Whiteside and seconded by Mr. Welbourn. Shall the motion carry?

Mr. CHARLTON: What about sections 110 to 113?

The CHAIRMAN: Just a minute. There is an amendment I believe by Mr. Charlton already before us. Shall that stand—"with the consent of the band", and you want that to read "by proclamation of the band".

Hon. Mr. HARRIS: Yes. We will come to that.

The CHAIRMAN: It is moved by Mr. Whiteside and seconded by Mr. Welbourn that after the word "thereof" we will add the word, "except sections 37 to 41". Will those in favour please say yes?

Mr. CHARLTON: No. I asked the minister, or I asked you about sections 110, 112 and 113, that they be included in that too.

Hon. Mr. HARRIS: No, there was no reason for 112 being included in it.

Mr. CHARLTON: Did not the minister say the other night that he could use 4 (2) to get around sections 110, 111 and 112, if he so desired?

Hon. Mr. HARRIS: No. If I did, that was not my intention, and it must have been because I was answering so many questions.

The CHAIRMAN: Is there any further discussion?

Those in favour? Those opposed.

I declare the amendment carried.

There is another amendment, that we replace the words "by proclamation" by the words "by consent of the band". That is moved by Mr. Charlton; it was moved by him at the meeting of April 16, that that clause be amended by changing the words "by proclamation" to read "the Governor in Council may by consent of the band".

Mr. CHARLTON: With the consent of the band.

The CHAIRMAN: With the consent of the band, declare this Act—would the minister explain that? Would the minister accept that?

Hon. Mr. HARRIS: We considered it the other day and there is no point in amending the clause in that form because we have the protection for that by our amendment now which we consider to be sufficient for the immediate purpose.

The CHAIRMAN: All those in favour of the amendment?

Mr. CHARLTON: I do not see the reason why the minister will not accept that amendment. I mean, what would he want to do without the consent of the band; what would he want to do by proclamation that the band did not agree with? Would he sincerely want to do something which the band did not agree to? Would he want to do something with which they were not in agreement by proclamation?

Hon. Mr. HARRIS: It is quite possible that the minister may want to take action along that line in the interest of the band, yes.

Mr. CHARLTON: In what particular regard?

Hon. Mr. HARRIS: For example, as you all know opinions in the band vary as much as they do at outside points, and you may very well have an excellent reason for doing something which, because of local opinion, would not be acceptable at that time but you know in time will be. After all, the minister and parliament in the end accept responsibility for these decisions, and there may be a time when the minister will have to make such a decision even if it would appear at the moment not favourable to the band.

The CHAIRMAN: All those in favour of the amendment moved by Mr. Charlton say yes?

Contrary, no.

In my opinion the no's have it.

Hon. Mr. HARRIS: Did you carry subsection (2)?

The CHAIRMAN: We didn't deal with it, it was carried before. I am now dealing with section 4 (2). Shall section 4 as amended carry?

Carried.

Hon. Mr. HARRIS: We will then turn to section 9, subsection (3).

(3) Within three months from the date of a decision of the Registrar under this section

(a) the council of the band affected by the Registrar's decision, or

(b) the person by or in respect of whom the protest was made,

may, by notice in writing, request the Registrar to refer the decision to a judge for review, and thereupon the Registrar shall refer the decision, together with all material considered by the Registrar in making his decision, to the judge of the county or district court of the county or district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other county or district as the Minister may designate.

Mr. CHARLTON: Before you continue further, is it the wish of the minister to carry all the sections before we decide whether we are having the delegates in or not?

Hon. Mr. HARRIS: These are amendments which I have prepared as a result of the conference with the Indians or which have been prepared as a result of our discussions here, where questions were raised as to why we should not do this or that.

The CHAIRMAN: I think we should go along with these amendments and leave your question to the end.

Mr. CHARLTON: And deal with the question of bringing in Indian delegates after we are all through with the Act?

Mr. HARKNESS: What would be the use of bringing Indian delegates down here to appear before the committee after we have finished with the bill?

Hon. Mr. HARRIS: For example, you raised some questions here which gave rise to the amendments that we now have before us. Do you think you will like to have the advice of the Indians on it? I think we should be responsible for what we say here and not substitute somebody else's judgment.

Mr. HARKNESS: Yes, but I thought that was the whole basis of the discussion we had here at our first meeting, and that the question would be left for decision later.

Hon. Mr. HARRIS: I think we should dispose of the amendments to the Act before we take that up.

Mr. HARKNESS: The object was to have them appear here and give their views as to the changes being made in the Act. That was left over at the time but there was supposed to be some decision taken by the committee on it. If we did hear them we would know what they had to say about the Act. As it is, it means that the entire Act is being dealt with and passed and then when we have finished it the thing will be over and done with, as far as I can see.

Hon. Mr. HARRIS: I have not completed my report on the Act because, as I said on second reading and intimated at the opening of these proceedings, there would be amendments put forward and we did allow sections to stand for that purpose. If you will permit me to complete my report then I am sure we can come to a decision about the Indians. For example, the next amendment I have today is one which was raised by, I am not sure whether it was Mr. Richard or Mr. Valois, because we had failed to provide for the kind of judge to try appeals in the province of Quebec, as a result of which the Indians in that province would be deprived of that privilege and I am now going to put that provision into the Act. That has to be done. That is section 9, subsection (3). You will notice the Act says, we have provided for an appeal to a judge of the county or district court, but we have overlooked, or did not provide for the fact that there is no such judge in the province of Quebec; so, after the word "designate" we are going to add the following lines—

The CHAIRMAN: What line is that?

Hon. Mr. HARRIS: At the bottom of the page, the last line. We are going to add:

or in the Province of Quebec, to the judge of the Superior Court for the district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other district as the Minister may designate.

The CHAIRMAN: All in favour of the amendment? Opposed?

Carried.

Shall section 9 (3) as amended carry? Oh, I see there is another change, section 9 (4).

Hon. Mr. HARRIS: That is in order to make 9 (4) confirm with 9(3). We strike out the first line and substitute the following words "the judge of the county, district or Superior court, as the case may be, shall".

The CHAIRMAN: Shall the amendment carry?
Carried.

Mr. APPLEWHAITE: I don't remember in what connection but my notes say that in subsections (3) and (4), we were discussing the question of entitlement.

The CHAIRMAN: Oh, yes.

Hon. Mr. HARRIS: Yes, we did discuss that. I will come to that. It is not a matter of amendment, it is simply a matter of explanation.

The CHAIRMAN: Shall section 9, subsection (1), (2), (3) and (4), as amended, carry?

Carried.

Hon. Mr. HARRIS: Section 12.

12. (1) The following persons are not entitled to be registered, namely,

(a) a person who,

(i) has received or has been allotted half-breed lands or money scrip,

(ii) is a descendant of a person described in subparagraph (i),

(iii) is enfranchised, or

(iv) is a person born of a marriage entered into after the coming into force of this Act and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph (a), (b), or (d) of section eleven, unless, being a woman, that person is the wife or widow of a person described in section eleven, and

(b) a woman who is married to a person who is not an Indian.

(2) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

Mr. CHARLTON: Did section 10 stand?

The CHAIRMAN: Not with me; it carried.

Mr. HARKNESS: Well, section 11 stood.

The CHAIRMAN: No, section 11 carried.

Hon. Mr. HARRIS: It was section 12 which stood.

Mr. HARKNESS: Section 11 stood also.

Hon. Mr. HARRIS: Section 11, (d) and (e). I think the difficulty actually relates to 12, and if you will just let me deal with the amendments to 12 first we can then perhaps come back to 11. In section 12 we are dealing with persons who are not entitled to be registered, and if you refer to subsection (iv) it reads: "is a person born of a marriage entered into after the coming into force of this Act and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraphs (a), (b) and (d)", if we continue on section eleven, unless entitled to be registered by virtue of paragraph (e) of section 11.

Mr. APPLEWHAITE: That is the point we brought up.

The CHAIRMAN: So there will be an amendment to clause (3).

Hon. Mr. HARRIS: Yes, the amendment is to clause (3) (iv) by adding the words, "or entitled to be registered by virtue of paragraph (e) of section 11".

Mr. HARKNESS: Just a minute, these are persons not entitled to register?

Hon. Mr. HARRIS: That is right.

Mr. HARKNESS: Well then, this section is designed to cut out certain other people; that is your amendment, it is designed to cut out certain other people?

Mr. APPLEWHAITE: To me it is rather complicated reading. Section 12 deals with people entitled to be registered, and it deals particularly with persons who are not entitled to be registered, but subsection (iv) gives a preference when it says, "unless, being a woman, that person is the wife or widow of a person described in section 11"; and also it says, "his mother and his father's mother are not persons described in paragraph (a), (b) or (c) of section 11." In other words, it is totally negative. Surely we have right now enabling legislation for people to come under section (b).

Hon. Mr. HARRIS: You are quite right. This is an illegitimate person, as set out in subsection (iv). Under (e) of section 11, there is provision for the registration of the illegitimate child of a female person. She is entitled to be registered under paragraph (b) of the same section, and (iv) sets out the provisions under which she is entitled to be registered under (b) and, therefore, the question of the illegitimacy of the person under (e) does not make any difference to a person under section 12, provided the legitimate person under (e) is entitled to register.

The CHAIRMAN: Does the amendment carry?

Mr. HARKNESS: No. We come back to the whole difficulty that I raised in connection with the definition of illegitimacy. I think there is a great ambiguity in regard to the matter.

Hon. Mr. HARRIS: We are ready to discuss that point if you want to go into it now. It was one of those matters we were going to discuss in detail. I think you will agree that the objection to section 12, subsection (4) has been removed because, if there is an illegitimate child under section 11, subsection (e), whose father was a non-Indian so determined by the registrar under subsection (e), then that child is not entitled to be registered as an Indian on the band list, and that child would be considered a non-Indian under Section 12, subsection (4).

So, if that person became one of the two females in line under subsection (4), then you would, at the age of 21, count out the children.

If, however, the illegitimate child under subsection (e) was not considered to be a child of a non-Indian father, that child would be an Indian, taking the status of the mother, and, if on the band list, then, and married, the child would not be one of the female ancestors under subsection (4) which would disqualify the children.

Mr. HARKNESS: In my opinion, it makes subsection (4) worse instead of better because it adds to what I consider the basic thing wrong with that subsection. That is, under it you are going to be excluding from Indian status people who are probably $\frac{3}{4}$ Indian blood or more because their mother or grandmother was considered illegitimate.

Apparently you are going to bring people into Indian status who are less than one-half Indian under these other provisions. So the thing does not seem to me to be reasonable, if you go on that basis.

Hon. Mr. HARRIS: I think you have mistaken the situation. There may be people on the reserve who have a good deal of white blood in them at the moment, but we are not concerned with whether they are on the band list. That has all been done. What we are trying to do is to provide that where there have been two successive marriages to a person who is a female and white, then by that time their blood has got down to one-quarter, and I think they should not be considered to be Indians.

Mr. HARKNESS: Oh, that is not what subsection (4) does.

Hon. Mr. HARRIS: Yes, that is what subsection (4) does!

Mr. HARKNESS: No, it is not. Consider the case of a person who is a full-blooded Indian. He enters into a union with a woman who really is a half-blooded Indian, but she is not entitled to Indian status and she is illegitimate. All right!

Hon. Mr. HARRIS: She is illegitimate because her father was a white man?

Mr. HARKNESS: No. She is illegitimate for any reason.

Hon. Mr. HARRIS: We have provided by our amendment that the illegitimate child of an Indian mother, who would at least have half Indian blood in her, will be on the band list, provided an investigation does not disclose that the father was a white man.

You have to consider the marriage. You have in mind a marriage between a full-blooded Indian and a girl in the illegitimate class, if you want to take it that way, whose father has been found to be white. That girl, we will suppose, is one-half white and one-half Indian, her father being white and her mother being Indian. You start with that situation, because we have covered the other one.

The CHAIRMAN: Does the section carry?

Mr. HARKNESS: I am still not quite clear that the other is covered.

Hon. Mr. HARRIS: Well, it is according to the amendment I have made.

Mr. CHARLTON: Should that word "and" be left in subsection (4)?

The CHAIRMAN: It should go after subsection 11.

Well, gentlemen, there goes the division bell.

Hon. Mr. HARRIS: Perhaps we may try to clarify our thinking so that we will have it ready when we come back. I suggest to you that the illegitimate child of an Indian woman goes on the band list under subsection (e). The illegitimate child of an Indian goes on the band list unless under section 11, subsection (e) the registrar has taken action and it has been determined that the father was a white man. So you just have two groups of illegitimate children, one whose parent was white, and one whose parent was not so determined. The one whose father has been determined to be a white man does not go on the band list, while the other one does.

The one who is on the band list does, by my amendment to subsection (4), remain an Indian. So she does not enter into it, nor do her heirs or children enter into the disqualification in section 12. It is the other woman who does. You can think that one out.

Mr. HARKNESS: That is all right. I see that. I think it removes any objection I had.

The CHAIRMAN: Shall we carry the clause?

Mr. HARKNESS: It removes any objection I had to this particular amendment; but as far as the whole section is concerned, I think my point still stands.

Hon. Mr. HARRIS: We will discuss that later.

(The committee took a recess.)

The CHAIRMAN: Will you come to order, gentlemen. We were dealing with section 12 (1).

Hon. Mr. HARRIS: I think Mr. Harkness is agreeable to the amendment so we might carry that section and revert to the general discussion under section 11.

Mr. HARKNESS: Also, the point we were talking about under section 12 was the general situation which could arise, and which I pointed out I thought was inequitable—where you might very readily have a seven-eighths Indian expelled from the band under this provision, whereas a person who was perhaps less than one-quarter Indian would remain in the band.

The purpose of the section, as far as I can make out, is just the reverse of that.

Hon. Mr. HARRIS: I think the difficulty you have in mind is the difficulty under section 11 and not under section 12.

I think you agree with me that section 12 is in order—that where the blood gets down to a quarter, in the future that person should not be entitled to the benefit of the Indian Act. Your point is that there may be a person under section 11 who, while having ostensibly seven-eighths Indian blood would, nevertheless, not qualify for membership under 11. That is your point?

Mr. HARKNESS: No, I think the thing perhaps comes right under 12. For example you have this kind of a situation. An Indian marries a white woman. She and her children become Indians. One of those children marries another white woman and those children are Indians under your standing, but there is nothing under this to prevent them remaining Indians although the blood by that time is at the most one-quarter Indian?

Hon. Mr. HARRIS: 12 does not count them out when they reach 21. Where you have two successive female whites, the children of the second marriage may be brought up to the age of 21 on the reserve and then they cease to be Indian.

Mr. HARKNESS: All right, those people are out but at the same time you could have the case where an Indian we will say marries a half-breed woman who is illegitimate. One of the children—a daughter of the marriage, lives with a man. One of the children of that union marries another Indian, we will say. The blood by that time is presumably seven-eighths Indian, is it not? Those children, under this, are still going to go out of Indian status?

Hon. Mr. HARRIS: Those children would have Indian status because their father was an Indian.

Mr. HARKNESS: No, because it says here—"whose mother and whose father's mother are not persons described—".

Hon. Mr. HARRIS: Yes, but the last example you gave was not "any" person under section 12.

Mr. HARKNESS: Why not?

Hon. Mr. HARRIS: Well you started with a marriage between an Indian and a half blood non-Indian. You supposed there was a woman who was half white and half Indian.

Mr. HARKNESS: Yes?

Hon. Mr. HARRIS: And because her father was a white, so found under (e) of section 11, she was not entitled to be a member of the band. That is the situation you are now describing?

Mr. HARKNESS: Yes.

Hon. Mr. HARRIS: Then, of this union there are children?

Mr. HARKNESS: Yes.

Hon. Mr. HARRIS: Then, one of the daughters of that union marries an Indian?

Mr. HARKNESS: Yes.

Hon. Mr. HARRIS: She then becomes the wife of an Indian and entitled to band membership.

Mr. HARKNESS: Yes, but you say that one of the sons—"whose mother and whose father's mother—"

Hon. Mr. HARRIS: But you have not got two female non-Indians in succession in the example you gave me.

Mr. CHARLTON: You have to have two in succession?

Hon. Mr. HARRIS: Yes.

Mr. APPLEWHITE: Mother and grandmother?

Hon. Mr. HARRIS: Yes. It is rather unlikely to happen, nevertheless I think the principle is sound.

The CHAIRMAN: I think we carried section 12 before, but shall it carry as amended?

Carried.

Are you satisfied with section 11?

Mr. HARKNESS: No, we are not satisfied with that. I have still got the question of what is the definition of "legitimate". Perhaps there is a possibility of including some definition of it in the first section.

Hon. Mr. HARRIS: We might leave it and get through the other amendments. It may be somewhat lengthy.

Mr. FULTON: While it is being considered may I say that it would be preferable from the point of view of a draftsman to insert the word "or" at the end of each subsection?

Hon. Mr. HARRIS: No, Justice is very adamant on that.

Mr. FULTON: You have taken it up?

Hon. Mr. HARRIS: Yes.

Mr. FULTON: These clauses are intended to be alternate?

Hon. Mr. HARRIS: Right.

Mr. FULTON: Justice says then that "or" between the last two subsections makes the others alternatives?

Hon. Mr. HARRIS: They appear to have professional views on that point. I could not move them.

The CHAIRMAN: The next is section 15, subsection (4).

(4) Where the name of a person is removed from the Indian Register and he is not entitled to any payment under subsection one, the Minister may, if he considers it equitable to do so, authorize payment, out of moneys appropriated by Parliament, of such compensation as the Minister may determine for any permanent improvements made by that person on lands in a reserve.

Hon. Mr. HARRIS: To meet Mr. Harkness's point I think we should change the word "may" to "shall".

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall section 15 as amended carry?

Carried.

Section 32(1).

32 (1) A transaction of any kind whereby a band or a member thereof purports to sell, barter, exchange, give or otherwise dispose of cattle or other animals, grain or hay, whether wild or cultivated, or root crops or plants or their products from a reserve in Manitoba, Saskatchewan, Alberta, the Northwest Territories or the Yukon Territory, to a person other than a member of that band, is void unless the superintendent approves the transaction in writing.

Mr. CHARLTON: What about sections 28(2) and 29? They both stood.

Hon. Mr. HARRIS: Yes, we will come back to those. I am moving the amendments I intend to make and the others, where there is no amendment, will be left for further discussion.

To meet Mr. Simmons' suggestion we proposed to strike out the words "the Northwest Territories or the Yukon Territory" and insert "and" in place of the comma between "Saskatchewan" and "Alberta".

It will read: "—from a reserve in Manitoba, Saskatchewan, and Alberta."

Mr. FULTON: I am sorry to be technical again but should it not be "or" in the "or Alberta"?

Hon. Mr. HARRIS: To be technical again too, no.

Mr. FULTON: You have "the Northwest Territories or the Yukon—" which would seem to make it alternative and if you put in an "and" instead of "or" you have taken out the "or" by eliminating those words. Should you not then put in the word "or" instead of the word "and"?

Hon. Mr. HARRIS: The local is 5977, if you call them you will get the answer.

Mr. FULTON: Does Justice take the position that the word "or" as it is in here now is the wrong word? Unless they take that position it seems to me that if you strike it out in one place you must put it in again there.

Hon. Mr. HARRIS: You are too logical.

Mr. FULTON: What was that?

Hon. Mr. HARRIS: You are too logical.

Mr. FULTON: No, I would like to have an answer to the question.

Hon. Mr. HARRIS: I have given you the answer—that this amendment was drafted by Justice this morning.

Mr. CHARLTON: Perhaps in too much of a hurry.

Mr. APPLEWHAITE: I regret to say, with respect to Justice, that I think Mr. Fulton is right.

Mr. WHITESIDE: I doubt that he is. I can see it is possible for a reserve to be both in Manitoba and Saskatchewan.

Mr. APPLEWHAITE: But not in all three.

Mr. WHITESIDE: It could be both in Alberta and Saskatchewan.

Mr. FULTON: Let us put in "and/or."

The CHAIRMAN: It has been submitted to Justice and this is their interpretation. Shall the section as amended carry?

Carried.

Section 70 (2).

(2) The Minister may apply any profits that result from the operation of farms on reserves to extend farming operations on the reserves or to make loans to Indians to enable them to engage in farming or other agricultural operations or he may apply such profits in any way that he considers to be desirable to promote the progress and development of Indians.

Hon. Mr. HARRIS: We propose to insert after the word "farm" in the second line of subsection (2), the words "pursuant to subsection (1)."

The CHAIRMAN: Shall the section as amended carry?

Carried.

Mr. HARKNESS: There was some other discussion on that section.

Hon. Mr. HARRIS: Yes, and you proposed that the money should go to the band funds.

Mr. HARKNESS: I think the point is you said that any money that was left over from any profits you did not use in this way would go into consolidated revenue fund.

Hon. Mr. HARRIS: That is right.

Mr. HARKNESS: I asked if there could not be an amendment that such funds should go into band funds instead of the consolidated revenue accounts.

Hon. Mr. HARRIS: You will notice the alternative use of the word "or" in the third last line—"or he may apply such profits in any way that he considers to be desirable to promote the progress and the development of Indians". That can cover payment to the band funds.

The CHAIRMAN: Shall the section carry?

Mr. HARKNESS: But still, if you do not spend the money in that way it could still be put into consolidated revenue fund?

Hon. Mr. HARRIS: It could.

Mr. HARKNESS: Well, do you not think it desirable to have some words in there definitely—"or the profits not so used as hereinbefore mentioned shall be put into the band funds", or something along that line?

Hon. Mr. HARRIS: No, I do not, because you have the position in which at the most the right of the band would be some form of rental of the land and, having made allowance that far and having decided for any number of good reasons which might show up that you do not propose to use the money for the other purposes under subsection (2), and since it is government money, you should not exclude the possibility that in some cases it would be desirable that it should go into the consolidated revenue fund.

I should add it is not being done—these farms do not show a profit and it is not being done.

Mr. HARKNESS: I should not think it would be done. I think the profits on these Indians' farms should go to develop the reserves and for the welfare of the Indians.

Hon. Mr. HARRIS: Well, we have, of course, the obligation to the taxpayer of Canada, too, to bear in mind at all times.

Mr. ASHBOURNE: How are the losses taken care of?

Hon. Mr. HARRIS: By the taxpayers of Canada.

Mr. ASHBOURNE: What about these loans you make, are they repayable with interest?

Hon. Mr. HARRIS: Oh yes, and if there is a loss you and I share it.

The CHAIRMAN: Section 70 (2) as amended?

Carried.

We will proceed on to section 77 (2) where we were going to put in paragraph (ii) the amendment proposed.

- (2) The office of chief or councillor becomes vacant when
 - (a) the person who holds that office
 - (i) is convicted of an indictable offence,
 - (ii) dies or resigns his office, or
 - (iii) is or becomes ineligible to hold office by virtue of this Act, or
 - (b) the Minister declares that in his opinion the person who holds that office
 - (i) is unfit to continue in office by reason of his having been convicted of an offence,
 - (ii) has been absent from meetings of the council for three consecutive months without being authorized to do so, or
 - (iii) was guilty, in connection with an election, of corrupt practice, accepting a bribe, dishonesty or malfeasance.

Hon. Mr. HARRIS: The proposal in subsection (2) (ii) is to change the word "months" to "meetings".

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the section as amended carry?

Carried.

Section 78:

78. The Minister may set aside the election of a chief or a councillor on the report of the superintendent that he is satisfied that

- (a) there was corrupt practice in connection with the election,
- (b) there was a violation of this Act that might have affected the result of the election, or
- (c) a person nominated to be a candidate in the election was ineligible to be a candidate.

Hon. Mr. HARRIS: The proposal here is to revert to the practice which is now in existence under the present Act and to shift the responsibility of making this decision from the minister back to the Governor in Council. Therefore the section would read:

The Governor in Council may set aside the election of a chief or a councillor on the report of the minister that he is satisfied that

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the section as amended carry?

Carried.

Section 79 (c):

- (c) the duties of the representative of the Minister at such meetings, and

Hon. Mr. HARRIS: The amendment will read:

- (c) the duties of any representative of the minister

Some of the Indians are quite divided on whether they want the agent in all times and we are making a way whereby others might be appointed by the minister for that purpose.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the section as amended carry?

Carried.

Section 81 (2):

(2) A by-law made under section eighty shall come into force forty days after it is made unless it is disallowed by the Minister within that period, but the Minister may declare the by-law to be in force at any time before the expiration of that period.

Hon. Mr. HARRIS: The proposal here is to strike out the words "after it is made" and substitute "after a copy thereof is forwarded to the minister pursuant to subsection (1)", as suggested by Mr. Gibson.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the section as amended carry?

Carried.

Section 91 (1):

91. (1) No person who is

- (a) an officer or employee in the Department,

(b) a missionary engaged in mission work among Indians, or

(c) a school teacher on a reserve,

shall, without a licence from the Minister or his duly authorized representative, trade for profit with an Indian or sell to him directly or indirectly goods or chattels.

Hon. Mr. HARRIS: This is the section which prohibits any person who is an employee of the department trading with an Indian for profit without a licence.

The new wording suggested is:

but no such licence shall be issued to a full-time officer or employee in the department.

Mr. CHARLTON: Are we to assume that part-time employees would still be able to do that?

Hon. Mr. HARRIS: It is necessary in many cases.

Mr. CHARLTON: It is not desirable.

Mr. HARKNESS: I was not here during the discussion.

Hon. Mr. HARRIS: Well, there was no discussion while we were on the section but at the conference there was a discussion on agents being put in a position where they can make a profit out of the Indians and we answered that few of them, if any, were permitted to do so, but we had to admit that under this section a licence could be given by the minister to an agent to trade for profit, but as it was not our intention, we agreed to exclude the permanent employee, and the amendment does that.

Mr. HARKNESS: I agree with the amendment so far as it goes but you still have the case of part-time agents, and if they are to be left in the position to deal with the Indians the sort of a situation will exist which can lend itself to abuses and I would think that probably should be covered too.

Hon. Mr. HARRIS: We discussed that at the conference and pointed out how unfortunate the result would be if we excluded them, and it was agreed at the conference that the part-time agent should be permitted to have a licence if the circumstances warranted it.

Mr. GIBSON: But you still have to give him a licence?

Hon. Mr. HARRIS: Yes. We have difficulty in getting part-time agents and do not want to go to the extent of having to hire a full-time agent for some reserves. For instance, I have in mind at the present time a life insurance agent who is acting as a part-time agent and if we excluded him from selling life insurance to the Indians his answer to us would be: I will not take your job for \$500, \$600, or \$700 a year for helping you to part-time look after these Indians. We do not want to be put in the position of having to hire a full-time agent.

Mr. APPLEWHAITE: Will he allow other agents to compete?

Hon. Mr. HARRIS: We are not going to give a monopoly to any company. We went through all this at the conference and saw the difficulties of barring part-time agents and decided if we barred the full-time agents, a large part of the evil would be disposed of.

Mr. ASHBOURNE: What about constables?

Hon. Mr. HARRIS: If a constable is a part-time employee; presumably we might upon application grant him a licence, and we might not.

Mr. CHARLTON: Subsection (2) of section 91 is still to be retained?

Hon. Mr. HARRIS: Yes.

Mr. CHARLTON: You may cancel a licence?

Hon. Mr. HARRIS: Yes.

Mr. FULTON: Did I understand the minister to say that Indian constables are all part-time employees?

Hon. Mr. HARRIS: No, I did not mean to infer that.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the section as amended carry?

Carried.

Section 105:

105. The Governor in Council may appoint persons to be, for the purposes of this Act, justices of the peace and those persons shall have and may exercise the powers and authority of two justices of the peace with regard to

- (a) offences under this Act,
- (b) offences under the *Criminal Code* with respect to inciting Indians on reserves to commit riotous acts, the prostitution of Indian women and robbing of Indian graves, and
- (c) any offence against the provisions of the *Criminal Code* relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the person or property of an Indian.

Hon. Mr. HARRIS: This was an amendment to section 105 that we had decided to remove before the conference, to strike out the words "the prostitution of Indian women". We did not think that it was desirable that those words should appear here, as there is a specific offence of that kind in the criminal code, so I move that the words be struck out.

Mr. GIBSON: So the words "the prostitution of Indian women" are not to be in here?

Hon. Mr. HARRIS: No; it is in the criminal code.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall section 105 be carried as amended?

Carried.

Section 110 (1):

110. (1) Upon the issue of an order of enfranchisement, any interest in land and improvements on an Indian reserve of which the enfranchised Indian had formerly been in lawful possession or over which he exercised rights of ownership may be disposed of by him by gift or private sale, but if not so disposed of within thirty days after the date of the order of enfranchisement such land and improvements shall be offered for sale by tender by the superintendent and sold to the highest bidder and the proceeds of such sale paid to him; and if no bid is received and the property remains unsold after six months from the date of such offering, the land, together with improvements, shall revert to the band free from any interest of the enfranchised person therein, subject to the payment, at the discretion of the Minister, to the enfranchised Indian, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

Hon. Mr. HARRIS: Mr. Applewhaite's objection to the wording "had formerly been" is accepted and we suggest the substitution of the word "was", and after the word "ownership" in lines 4 and 5, the words "at the time of his

enfranchisement" and after the word "sale" the words "to the band or another member of the band", so that the whole section would read as follows:

Upon the issue of an order of enfranchisement, any interest in land and improvements on an Indian reserve of which the enfranchised Indian was in lawful possession or over which he exercised rights of ownership at the time of his enfranchisement may be disposed of by him by gift or private sale to the band or another member of the band

and so forth.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall subsection (1) as amended carry?

Carried.

Is there anything else you want on section 110, Mr. Charlton?

Mr. CHARLTON: It still does not do away with the discrepancy in subsection (2).

Hon. Mr. HARRIS: I am sure you will agree with section 110 (1).

Mr. CHARLTON: It does not deal with subsection (2).

The CHAIRMAN: That was carried the last time.

Section 110 (1) as amended?

Carried.

Section 110 (2)?

Carried.

Section 110 (3)?

Carried.

Section 110 (4)?

Carried.

Now, we come to section 112, subsection (3) (b):

- (b) in the case of a band, that the band has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, and, in its opinion, the band is capable of managing its own affairs as a municipality or part of a municipality, and

Hon. Mr. HARRIS: The wording that I suggested we would likely have in (3) (b) is as follows:

- (b) in the case of a band, that in the opinion of the committee the band is capable of managing its own affairs as a municipality or part of a municipality and that the committee has submitted a plan for the disposal or division of the funds of the band and the lands in the reserve, and

And the concluding words at the end, are as follows:

except that, in the case of a band, the provisions of subsection two of section one hundred and eleven are not applicable.

Those were the amendments of which I gave notice at the other meeting.

The CHAIRMAN: Agreed?

Carried.

Section 114.

Hon. Mr. HARRIS: This is a minor draft amendment, and it reads:

the minister may provide for and make regulations to

The CHAIRMAN: Does the section carry?
Carried.

Mr. APPLEWHAITE: Where is the word "provide"?

The CHAIRMAN: After the word "may".

Mr. CHARLTON: "provide for and make regulations to

Hon. Mr. HARRIS: "provide for and make regulations to

(a) provide standards for buildings, equipment, teaching, education ..."
Carried.

The CHAIRMAN: Section 124.

Hon. Mr. HARRIS: This is the new section which is to be inserted. I may say that it has come up as a result of a court decision. I think I will read it and explain it—the section will read:

Where, prior to the coming into force of this Act,

(a) a reserve or portion of a reserve was released or surrendered to the Crown pursuant to Part I of the Indian Act, chapter ninety-eight of the Revised Statutes of Canada, 1927, or pursuant to the provisions of the statutes relating to the release or surrender of reserves in force at the time of the release or surrender of reserves in force at the time of the release or surrender,

(b) Letters Patent under the Great Seal of Canada were issued purporting to grant a reserve or portion of a reserve so released or surrendered, or any interest therein, to any person, and

(c) the Letters Patent have not been declared void or inoperative by any Court of competent jurisdiction.

the Letters Patent shall, for all purposes, be deemed to have been issued at the date thereof under the direction of the Governor in Council.

The position is this: there has been some question raised in the House of Commons about what is known as the St. Anne's lease, at Walpole Island. The details of it need not concern the committee; but there was an action to set aside a lease of certain hunting and fishing privileges on lands which were leased for that purpose by the Indians by resolution.

The lease had been granted many years ago; but when the action was tried, the court referred to section 51 of the present Act which says that lands which have been surrendered may be sold or leased pursuant to an Order in Council for that purpose. But no Order in Council had been passed. So that was the reason why the lease was not upheld by the court.

As a result of the report of that action appearing in the Law Reports, there have been many inquiries by solicitors and others as to the title of land on which they lived and which had been granted off and on for many years.

It was discovered that by inadvertance sales had been made and letters patent had been issued without the formality of an Order in Council. So the matter has resulted in a section of this kind for the purpose of confirming letters patent which have been granted which were not preceded by Orders in Council directing that they should be so granted.

I am sure you have all read the section and you have seen that it does not relate to any question of the surrender of lands. It only relates to the subsequent sale of them by letters patent.

Mr. APPLEWHAITE: Are you satisfied that there is not a typographical error in (a)?

Mr. FULTON: I think there is a line repeated there, Mr. Chairman.

Hon. Mr. HARRIS: That is right. We have one too many lines in (a).

The CHAIRMAN: Section 124?

Carried.

And the section will be renumbered as section 125.

Carried.

The committee now stands adjourned until Monday, April 30, 1951,
at 10:00 a.m.

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Indian, Special Committee on, 1951

SESSION 1951

HOUSE OF COMMONS

CH 1 X

SPECIAL COMMITTEE

APPOINTED TO CONSIDER

BILL No. 79

AN ACT RESPECTING INDIANS

CHAIRMAN—MR. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

MONDAY, APRIL 30, 1951

Report to the House of Commons

WITNESSES:

Hon. W. E. Harris, Minister of Citizenship and Immigration;
Mr. D. M. MacKay, Director, Indian Affairs Branch;
Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch;
Mr. W. Cory, Legal Adviser, Dept. of Citizenship and Immigration.

OTTAWA
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CONTROLLER OF STATIONERY
1951

CORRIGENDA

Evidence No. 5, April 23, 1951

(By Mr. MacInnes)

Page 171, line 9 thereof: 'and fishing' should be deleted.

Page 171, line 15 thereof: 'and fish' should be deleted.

REPORT TO THE HOUSE

MONDAY, April 30, 1951.

The Special Committee appointed to consider Bill No. 79, an Act respecting Indians, begs leave to present the following as a

SECOND REPORT

Your Committee has considered Bill No. 79, An Act respecting Indians, and has agreed to report it with amendments.

A reprint of the Bill, as amended, has been ordered.

A copy of the minutes of proceedings and evidence taken is appended.

All of which is respectfully submitted.

DON. F. BROWN,
Chairman.

MINUTES OF PROCEEDINGS

MONDAY, April 30, 1951

The Special Committee appointed to consider Bill No. 79, An Act respecting Indians, met at 10 a.m. this day. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Applewhaite, Blackmore, Blue, Boucher, Brown (*Essex West*), Bryce, Charlton, Fulton, Gibson, Harkness, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Noseworthy, Richard (*Gloucester*), Simmons, Welbourn, Whiteside, Wood.

In attendance: Hon. W. E. Harris, Minister of Citizenship and Immigration; Mr. D. M. MacKay, Director, and Mr. T. R. L. MacInnes, Secretary, Indian Affairs Branch, and Mr. W. Cory, Legal Adviser, Department of Citizenship and Immigration.

The Committee resumed consideration of Bill No. 79, An Act respecting Indians.

It was agreed that in Clause 12, sub-clause(2), the word "person" in line 18 be changed to "Indian".

Clause 28, sub-clause (2), was adopted.

Clause 29: Mr. Applewhaite moved in amendment that the following words be inserted after the word "lands" in line 32:

whether held under a certificate of possession, a certificate of occupancy or by a band or otherwise.

The question was put and the vote being 7 yeas and 7 nays, the amendment was negatived by the vote of the Chairman.

Clause 29 was then adopted on division.

Clause 32, sub-clause (1): It was agreed that the word "or" replace the word "and" between "Saskatchewan" in line 20 and "Alberta" in line 21.

Clause 37 was adopted.

Clause 72, sub-clause (2) was adopted.

Clause 92, sub-paragraph (b) was adopted.

Clause 11, paragraphs (d) and (e) were adopted.

Clause 86, sub-clause (2) was adopted on the following division:

Yeas: Messrs. Applewhaite, Blue, Boucher, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Richard, (*Gloucester*), Simmons, Welbourn, Whiteside, Wood. (11)

Nays: Messrs. Blackmore, Bryce, Charlton, Fulton, Noseworthy. (5)

The question of calling Indian witnesses having again been raised, Mr. Fulton moved that in addition to any other witnesses to be heard, your Committee should call and hear evidence from representative Indian delegates on their desires and opinions with respect to Bill No. 79.

Mr. Simmons moved in amendment thereto that all the words after the word "that" in the first line be struck out, and the following substituted therefor:

This Committee is of the opinion that no further evidence is now required for our purposes, but that we recommend that further consideration be given to the Indian Act in two years time.

The question having been put, the amendment of Mr. Simmons was adopted on the following division:

Yeas: Messrs. Applewhaite, Blue, Boucher, Gibson, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Simmons, Welbourn, Whiteside, Wood. (11)

Nays: Messrs. Blackmore, Bryce, Charlton, Fulton, Noseworthy. (5)

Mr. Fulton having raised the point of order that the amendment negatived the main motion, the Chairman ruled the amendment of Mr. Simmons in order. Mr. Fulton, having appealed the ruling of the Chairman, the ruling was sustained on the following division:

Yeas: Messrs. Applewhaite, Blue, Boucher, Gibson, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Simmons, Welbourn, Whiteside, Wood. (11)

Nays: Messrs. Blackmore, Bryce, Charlton, Fulton, Harkness, Noseworthy. (6)

Doubt having been expressed regarding the regularity of the procedure taken in relation to the above-mentioned proposed motion of Mr. Fulton and the proposed amendment thereto of Mr. Simmons, by unanimous consent the question was again put on the amendment of Mr. Simmons and resolved in the affirmative on the following division:

Yeas: Messrs. Applewhaite, Blue, Boucher, Gibson, Jutras, Little, MacLean (*Cape Breton North and Victoria*), Simmons, Welbourn, Whiteside, Wood. (11)

Nays: Messrs. Blackmore, Bryce, Charlton, Fulton, Harkness, Noseworthy. (6)

The question having been put, Mr. Fulton's motion, as amended, was adopted on division.

On motion of Mr. Wood,—

Ordered,—That the Bill be reprinted as amended.

A joint letter from Chief Simon K. Simon and Chief James Montour, both of Oka, Que., addressed to Mr. J. W. Noseworthy, was read into the record.

The form "Waiver of Taxation Exemption" used by the department, was placed on record. (See Appendix "A" to evidence of this day.)

A copy of the Penobscott treaty, together with renewal, was placed on record. (See Appendix "B.")

The Bill was adopted on division and the Chairman was instructed to report the Bill, as amended, to the House.

The Chairman thanked the Minister, the officials of the department, and the members of the Committee for their attendance and assistance in expediting the consideration of this Bill.

At 12.40 p.m. the Committee adjourned.

E. W. INNES,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
April 30, 1951.

The Special Committee appointed to consider the Indian Act met this day at 10:00 a.m. The Chairman, Mr. D. F. Brown, presided.

The CHAIRMAN: Gentlemen, the meeting will now come to order. Mr. Fulton?

Mr. FULTON: Mr. Chairman, I was wondering if we could have a list of those sections with which we still have to deal.

Hon. Mr. HARRIS: I can give it to you. It is a long list. It includes some sections which have not actually been carried, but questions have been asked on those sections. There are about 17 of them with respect to which either information was asked or which really have not been carried. I propose to start now and run through them.

Mr. FULTON: How many sections have not been carried yet?

Hon. Mr. HARRIS: I think seven.

The CHAIRMAN: First, Section 9, subsection (4)

(4) The judge of the county or district court shall inquire into the correctness of the Registrar's decision, and for such purposes may exercise all the powers of a commissioner under Part I of the Inquiries Act; the judge shall decide whether the person in respect of whom the protest was made is, in accordance with the provisions of this Act, entitled or not entitled, as the case may be, to have his name included in the Indian Register, and the decision of the judge is final and conclusive.

Hon. Mr. HARRIS: Mr. Blackmore asked if the judge, under this section, could award costs. The answer is: he can under the Judges Orders Enforcement Act, for example. That is an Ontario statute. And as a commissioner, he also, as judge of his own court, whether it be a county or a superior court, has the power to award costs.

The CHAIRMAN: Does subsection (4) carry?

Carried.

Next?

Hon. Mr. HARRIS: Section 11.

11. Subject to section twelve, a person is entitled to be registered if that person

(a) on the twenty-sixth day of May, eighteen hundred and seventy-four, was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, chapter forty-two of the statutes of 1868, as amended by section 6 of chapter 6 of the statutes of 1869, and section eight of chapter twenty-one of the statutes of 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada,

(b) is a member of a band

(i) for whose use and benefit, in common, lands have been set apart or since the twenty-sixth day of May, eighteen hundred and seventy-four have been agreed by treaty to be set apart, or

- (ii) that has been declared by the Governor in Council to be a band for the purposes of this Act,
- (c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b),
- (d) is the legitimate child of
 - (i) a male person described in paragraph (a) or (b), or
 - (ii) a person described in paragraph (c),
- (e) is the illegitimate child of a female person described in paragraph (a), (b), or (d), unless the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered, or
- (f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

Mr. Harkness was interested in the question of legitimacy here. Since Mr. Harkness is not present at the moment, perhaps we had better let this section stand and continue with the others. He may be along shortly.

Section 12, subsection (2).

(2) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

In this subsection Mr. Applewhaite asked why we had used the word "Indian".

The minister may issue to an Indian to whom this Act ceases to apply, a certificate to that effect.

I must confess that I should have known the answer because I was responsible for it. The department usually uses the word "person". But there is a tendency on the part of the Indians to resent any suggestion that they are not Indians at all times, whether they are under the Indian Act or not. It is a perfectly legitimate matter of pride on their part that they are Indians and not non-Indians. Therefore I suggested that the alteration be made so that it would indicate that the Indian is always an Indian and he can call himself such whether or not he was under the Indian Act.

Mr. APPLEWHAITE: Even though you come to the conclusion that an individual is not an Indian under section 12 subsection (1), you are still in a position to give him a certificate to release him for that purpose?

Hon. Mr. HARRIS: That is right.

Carried.

Hon. Mr. HARRIS: The next one is section 28, subsection (2).

(2) The Minister may by permit in writing authorize any person for a period not exceeding one year to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

I agreed to give some indication of the kind of matters which were dealt with, I have a long list here, but I think three or four will serve as examples. Some of them I mentioned when we were discussing this section. The first is: logging right-of-way; second, permission to use a road through an Indian reserve for various purposes, for example, a bus line. Third, for anchoring boats on the shore of a reserve. Fourth, for erection of a boat house, or a garage on various reserves. Fifth, for the anchoring of booming grounds on the shore of a reserve. Sixth, for sites for piling logs. Seventh, for sites for a sawmill or planing mill operations. Eighth, for certain rights on a reserve, for example, the right to go

on to purchase fish from the Indians. Ninth, for operation of canteens on a reserve. Tenth, for the purpose of granting certain churches the right to use portions of a reserve. Eleventh, for certain cottage sites, particularly in the province of Quebec. Twelfth, for advertising signs on a reserve.

There are a great many more, but these will do as an indication of the kind of permission which is granted by the minister under that section.

The CHAIRMAN: Is that sufficient?

Carried.

Mr. FULTON: Mr. Chairman, I understand this is one of the types of sections about which there was certain controversy and reservation on the part of the Indians who came down. Now, as I understand it from the Minister, since there are only about seven sections which are not actually carried, I wonder if this would not be the time to consider again the matter which was raised at the very beginning of this committee's proceedings, that is, whether or not we should hear from representatives of the Indians as to their views, particularly on the controversial sections.

The CHAIRMAN: You were not here on the last day, Mr. Fulton.

Mr. FULTON: I think I was, Mr. Chairman.

The CHAIRMAN: But you were not here when this matter was discussed. We did discuss it at the last meeting and we decided to hear the minister first and then to discuss any other points you would like to raise.

Mr. FULTON: Was it decided that we would carry even these controversial sections before deciding further?

The CHAIRMAN: While you carry these, you can still go back over them and review them.

Mr. FULTON: Am I to understand that the carrying by this committee of a section would not prejudice the right, if it is decided, to hear any representations. I mean the right to re-open the given section and to suggest amendments. You would not rule that this matter has been carried, and therefore it is not open to move an amendment to it?

The CHAIRMAN: I understand that this Act does not become law until it is passed by parliament.

Mr. FULTON: I was just wondering. Let us consider section 28, for example. If we carry section 28, and then decide, after we have carried that section, to hear representations from the Indians, you will not rule that, since section 28 has been carried, therefore it is not open for further consideration or amendments by this committee?

The CHAIRMAN: No, I think not. I think the committee can make its own laws and can decide whether it wants to open up an amendment, or whatever it wants to do on a particular section.

Mr. FULTON: So I take it that you will not rule, for example, that section 28 is not open for reconsideration by the committee?

The CHAIRMAN: I would think so; that is my understanding. We will make our own laws in this committee.

Mr. NOSEWORTHY: Is it not perfectly logical, Mr. Chairman, if there are sections as to which members of the committee want to have Indians' opinions, that the given sections should stand until we have heard them? What is the point of passing this section, then?

The CHAIRMAN: We will have to make up our minds.

Mr. NOSEWORTHY: But we cannot make up our minds until we have heard the other side of the question.

The CHAIRMAN: We should hear what has been represented to the minister and what the minister has to say on the subject. We should do that before we hear anybody else, I would say.

Mr. NOSEWORTHY: But that is not my point. My point is: why should we pass a section until we have heard the Indians' side as well as the minister's?

Hon. Mr. HARRIS: May I interrupt at this point to say that, as you will read at the top of page 9, of the Conference Report this section was unanimously agreed to by the Indians. There was discussion about it, but there was no opposition to it after explanation was given.

Mr. FULTON: So far as I am personally concerned, I would be satisfied with what the chairman has just said. But if later on we decided that we should hear Indian representations, I think we should have something to suggest to us with respect to the sections which have been carried. Will the chairman rule that principle is not precluded, and that we can move an amendment to one of these sections in accordance with the statement of Indians who may be heard, if I am correct in my understanding.

The CHAIRMAN: Probably you have not been here as often as some of the others, Mr. Fulton. But you probably know that we have referred to these sections two or three times although they have been passed. So I believe that answer is sufficient.

Mr. FULTON: I understand that seven sections have not been passed yet.

The CHAIRMAN: We can refer to them if anything comes up. We will make our own laws in the committee.

Mr. CHARLTON: What you have just said, Mr. Chairman, would lead us to believe that you do not intend to refer to them.

The CHAIRMAN: No, not at all. We referred to them.

Mr. CHARLTON: Well, that is enough.

The CHAIRMAN: No, it is not enough. Even when we have heard all these, should we then decide to hear other representations with respect to sections we have already passed, we will give affect to it.

Mr. FULTON: That is fine.

The CHAIRMAN: The committee may rule otherwise.

Mr. BLACKMORE: I think your provision is well taken, Mr. Chairman, and I agree with Mr. Fulton. But the question I was wondering about is: when we are considering a particular section or subsection, would it not be appropriate to put in right after it such an expression as "subject to the subsequent consent of the band council"?

The minister replied by saying that, after all, this right would be granted for only a year at a time and if, at the end of a year, it was deemed inadvisable to continue the grant, then it could be discontinued. But I have been wondering about it, and I ask why it would not be good sense to put in the words I have suggested?

Hon. Mr. HARRIS: Well, the decision we are bound to take on it, having in mind the temporary nature of this right or privilege would in most, if not all cases, result in an income, sometimes perhaps a substantial income to the Indian; and that since we are responsible for his welfare, and that of the band, we should have the final say as to whether any remedy or any temporary right is granted.

This is not to say that very many of these rights were granted without the consent of the band council. They are in most cases granted with the consent of the band council. But in connection with another section, I pointed out if you have an over-riding responsibility you must bear in mind that sometimes you must make a decision despite opposition which you know is not justified at the moment.

Mr. BLACKMORE: My reason for mentioning the matter, and my own feeling is that it is very important at this stage that the Indian feel that we are doing everything we can to give him protection.

I think that many of them never realized before just how drastic the Indian Act was, and they are a bit terrified to find out what is in the Indian Act.

Hon. Mr. HARRIS: I think that is true.

Mr. BLACKMORE: And if there is anything we can put in there to allay their anxieties, I think it would be a good thing to do, even though it would mean no change in policy from that which has been followed previously.

Hon. Mr. HARRIS: After the policy has been agreed on, I think we should uphold it, and I think we should point out to the Indian that we have increased interest in the Indian Act by additional publicity. For years he has been living under the Indian Act and he hasn't known that it did look rather hard. So we should remind him of his advantages and the fact that the powers are not exercised in an arbitrary manner.

Mr. BLACKMORE: Yes, Mr. Chairman, and no doubt we should remind them that the Act will be subject to revision after two years.

The CHAIRMAN: Does the section carry?

Carried.

Hon. Mr. HARRIS: Section 29.

29. Reserve lands are not subject to seizure under legal process.

Is Mr. Hatfield here? On section 28, before I leave it, Mr. Hatfield raised the question of the Tobique water system. He asserted there were certain things done there and I wish to reply.

On August 10, 1948, the Chief and councillors of the Tobique band, by resolution, requested the department to use up to \$10,000 of their band funds for the purpose of assisting in the establishment of a suitable domestic water system for their reserve, which would include as well the necessary fire protection. Authority was secured in 1949-50 to proceed with the construction of the system, the total cost of which was \$32,177. Of this amount, \$9,761.04 was paid from band funds and the balance, \$22,415.96 was provided from Parliamentary Appropriation.

Now, on Section 29. Mr. Applewhaite raised the question whether these words would be sufficiently inclusive to cover all kinds of land held by an Indian in possession or in the right of the reserve. This opinion has been given me by Mr. Varcoe.

The CHAIRMAN: Mr. Varcoe is deputy minister of Justice.

Hon. Mr. HARRIS: Yes. His opinion is in the form of a letter which reads as follows:

Dear Sir:

I understand that the committee on the Indian Bill wishes to have an opinion from me as to whether the expression "reserve lands" in clause 29 of the Bill includes lands in the possession of an individual Indian and with respect to which a certificate of possession has been issued.

In my opinion the answer is in the affirmative.

Mr. APPLEWHAITE: Mr. Chairman, I do not think this committee necessarily must always accept the opinion of Justice as to the Act. If it should do so, perhaps there would not be much point to our sitting here. In view of the fact that prevention against seizure under legal process was specifically mentioned in this section dealing with the issue of certificates of possession, and that since we have added section 87 to this Act, which states that an Indian is subject,

of course, to the provisions of this Act as well as to the provisions of existing provincial laws, I am going to move that section 29 be amended by adding, after the word "lands" the words:

whether held under a certificate of possession, a certificate of occupancy, or by a band or otherwise.

I do not think I am interfering in any way with the principle of the bill or with the administration of the Act by the Indian department. I feel in the case of a lawsuit, which is necessary before there can be legal process, in view of the facts I have stated, a court might decide that lands held by an individual Indian, although located on an individual reserve, are subject to legal process. If they were so subject the department would have to rescue the situation by retroactive legislation or something of that sort—and that is what I am trying to avoid.

The CHAIRMAN: The amendment by Mr. Applewhaite is: that section 29 be amended by inserting after the word "lands" the words "whether held under certificate of possession, certificate of occupancy, or by a band or otherwise—"

Hon. Mr. HARRIS: If Mr. Applewhaite will let this stand we will go on and come back to it.

Mr. BLACKMORE: I would be pleased to second that.

Hon. Mr. HARRIS: Next we have section 30. Mr. Murray suggested that the fine under this section was not high enough. We carried the section but I just want to point out for the record that the corresponding penalty section in the Indian Act, section 115, provides for imprisonment not exceeding one month and a penalty not exceeding \$10 and not less than \$5. In this section the maximum fine has been increased to \$50 or one month imprisonment or both.

The CHAIRMAN: Shall the section carry?

Carried.

Hon. Mr. HARRIS: Next is section 37.

Mr. FULTON: While we are commenting on section 30, that amalgamates four sections of the earlier Act. Is it the opinion of the Minister of Justice that all of the provisions of the earlier sections are embraced in this quite short section?

Hon. Mr. HARRIS: Well, we have an omnibus section towards the end providing for offences for which there is no specific penalty. It is section 100.

Mr. FULTON: It is under a considerably greater fine or penalty—\$200 or three months?

Hon. Mr. HARRIS: Yes.

Mr. FULTON: What I was wondering about is the question of cattle trespass which has been a matter of some considerable correspondence between myself and the minister. It was specifically provided for in the earlier sections. Would the effect of its not longer being specifically provided for under section 30 be that cattle trespass would be removed from this lighter penalty given by section 30 and would only now be included under section 100?

Hon. Mr. HARRIS: No, I think all forms of trespass would be tried under section 30.

The CHAIRMAN: Next is section 37?

37. Except where this Act otherwise provides, lands in a reserve shall not be sold, alienated, leased or otherwise disposed of until they have been surrendered to His Majesty by the band for whose use and benefit in common the reserve was set apart.

Hon. Mr. HARRIS: When this section was called I was asked what sections were contemplated by the opening six words. I made answer of two sections but there are a number of others and for the record they are:

Section 17 (2).

Section 28 (2).

Section 35.

Section 58 (1), b, and c.

Section 58 (3).

Section 58 (4).

Section 60.

Section 110 (2), (3), and (4).

Section 111.

Section 112.

The CHAIRMAN: Shall the section carry?

Carried.

Hon. Mr. HARRIS: Next is section 50. Mr. Applewhaite points out that the marginal note was incorrect and we have recognized that. It will now read: "Where devisee not entitled to reside on reserve."

Carried.

Next is section 66.

66. (1) With the consent of the council of a band, the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in his opinion will promote the general progress and welfare of the band or any member of the band.

(2) The Minister may make expenditures out of the revenue moneys of the band to assist sick, disabled, aged or destitute Indians of the band and to provide for the burial of deceased indigent members of the band.

(3) The Governor in Council may authorize the expenditure of revenue moneys of the band for all or any of the following purposes, namely,

(a) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves,

(b) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable,

(c) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof,

(d) to prevent overcrowding of premises on reserves used as dwellings,

(e) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves, and

(f) for the construction and maintenance of boundary fences.

Mr. Bryce asked for some information in regard to section 66 and allowances to aged Indians. I have a table here which might be put on the record showing the numbers drawing the full \$25 and lesser amounts.

As a matter of information 91.2 per cent draw the total \$25.

The CHAIRMAN: Is it agreed that the information be put on the record?

Agreed.

ALLOWANCES TO AGED INDIANS AS AT APRIL 25, 1951

Rates of Payment:

Rate	No. of Accounts	Percentages
\$25.00-	3,837	91.2 per cent
\$20.00-\$24.00	179	4.3 per cent
\$15.00-\$19.00	124	3. per cent
\$10.00-\$14.00	56	1.3 per cent
\$ 8.00-\$ 9.00	5	.1 per cent
less than \$ 8.00	5	.1 per cent
<hr/>		
4,206		

Hon. Mr. HARRIS: Next is section 69.

69. (1) The Minister of Finance may from time to time advance to the Minister out of the Consolidated Revenue Fund such sums of money as the Minister may require to enable him

(a) to make loans to bands, groups of Indians or individual Indians for the purchase of farm implements, machinery, livestock, motor vehicles, fishing equipment, seed grain, fencing materials, materials to be used in native handicrafts, any other equipment, and gasoline and other petroleum products, or for the making of repairs or the payment of wages, or

(b) to expend or to lend money for the carrying out of co-operative projects on behalf of Indians.

(2) The Governor in Council may make regulations to give effect to subsection one.

(3) Expenditures that are made under subsection one shall be accounted for in the same manner as public moneys.

(4) The Minister shall pay to the Minister of Finance all moneys that he receives from bands, groups of Indians or individual Indians by way of repayments of loans made under subsection one.

(5) The total amount of outstanding advances to the Minister under this section shall not at any one time exceed three hundred and fifty thousand dollars.

(6) The Minister shall within fifteen days after the termination of each fiscal year or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session thereof, lay before Parliament a report setting out the total number and amount of loans made under subsection one during that year.

Mr. Charlton asked for the total amount of money which has been taken in any one year. There is a table for the twelve years, 1939 to 1951, showing the amount in each year.

1939	\$ 3,500.00
1940	33,838.26
1941	10,673.37
1942	5,022.03
1943	1,000.00
1944	804.27
1945	1,579.11
1946	4,913.09
1947	16,069.50
1948	16,266.85
1949	30,518.66
1950	33,712.77
1951	47,983.25

The CHAIRMAN: Shall section 69 carry?
Carried.

Hon. Mr. HARRIS: The next is section 70.

70. (1) The Minister may operate farms on reserves and may employ such persons as he considers necessary to instruct Indians in farming and may purchase and distribute without charge, pure seed to Indian farmers.

(2) The Minister may apply any profits that result from the operation of farms on reserves to extend farming operations on the reserves or to make loans to Indians to enable them to engage in farming or other agricultural operations or he may apply such profits in any way that he considers to be desirable to promote the progress and development of Indians.

Mr. Blackmore asked about the number of government farms in Saskatchewan and there is an explanation here.

In regard to Mr. Blackmore's question on Section 70, Bill 79, this section is intended to provide for the establishment and operation by the department of what might be called experimental farms. The land selected for such a purpose would be on a reserve of the band and where circumstances called for rental being payable, it would be paid.

Although at one time there were a considerable number of such farms in Canada, at present there is only one, i.e., at Caradoc in the province of Ontario. This farm, in addition to being a demonstration project, is used to supply seed, other grain, potatoes, hay and straw to members of the band at less cost than if the commodities were bought on the open market. In addition, loans are made from the profits to assist Indians in their farming activities. As at March 31, 1951, the balance on hand in this account, which is entirely handled on the reserve, was \$6,690.40.

There are, however, 23 band farms in Saskatchewan. These are on lands set aside by resolution of the band for the purpose and eventually all profits will be credited to the trust accounts of the respective bands. At present, 16 are financed entirely by band funds, while 5 are financed from band funds augmented by revolving fund loans. The remaining 2 are financed so far, entirely by revolving fund loans.

In Ontario there are only 2 farms being operated by the department—the one at Caradoc, referred to above, and one at Golden Lake, the latter named financed entirely by revolving fund loan.

Mr. FULTON: I would like to raise this point. If it has been discussed before I will not pursue it further, but if it has not been discussed I would like the minister or the director to comment. It involves the degree of co-operation between the departmental agriculturists and the provincial agricultural personnel.

In British Columbia, at least in the part from which I come, the Indians have from time to time suggested that they are not fully served by the departmental agriculturists and they have recommended that more attention be paid to this matter. In discussing it with others it has been suggested to me that one solution might be to allow the provincial agricultural advisors to co-operate with the departmental ones to a greater extent and, in fact, do more work on the reserve. I am not suggesting that the Indian Affairs branch should abandon the agricultural service as it applies to Indians but I understand at the present time the provincial agriculturists are not encouraged. Sometimes it has been put as strongly as they are not permitted to go on reserves. I feel there is room for greater co-operation and that it is one field in which our treatment of the Indians might be brought into line with our treatment and the status of the white

people—by making use of the provincial agricultural services which, at the moment, are not available to Indians. That is the feeling at any rate in the part of the country from which I come—that the departmental agriculturists might well be supplemented by the provincial ones, and I understand our provincial agriculturists in British Columbia are willing to give that service if they are permitted to do so.

Has any attempt been made, or can the minister or director make any comment?

Mr. MACKAY: In my time in British Columbia every encouragement was given to the provincial officials, not only in agriculture but in other fields, to co-operate in the matter of Indian administration. Of course, provincial agriculturists have their own work to do but I recall on a number of occasions their coming to our assistance without hesitation in connection with cattle difficulties and the examination of land to advise us just what crops should go in. I think I can say without hesitation the present commissioner in British Columbia would be very glad indeed to encourage the local provincial people to do what is possible to assist Indians on reserves. There is not anything by way of prevention—we would not prevent the provincial people from extending assistance; we would encourage it.

Mr. FULTON: I am glad to hear you say that. Perhaps it is a matter that can be worked out on a local basis. Are you aware of whether any direct conversations have been held lately with a view to co-ordinating the matter in British Columbia? As you know there is out there an Indian advisory committee. Has this matter been discussed with the commissioner out there and the Indian advisory committee?

Mr. MACKAY: I cannot say whether it has but inasmuch as that committee has been set up I should think they would get together with their own people and our people would get together with them and do what is possible by way of co-operation in the field you have mentioned, as well as in other fields.

Mr. FULTON: Well, before leaving that subject I would like to recommend to Major MacKay, for the reason the Indians have mentioned specifically—the question of agriculture—that your commissioner and the Indian advisory committee discuss the matter and see whether a greater degree of co-ordination can be achieved and greater assistance rendered by the agriculturalists.

Mr. MACKAY: I shall be glad to bring it to the attention of the commissioner.

The CHAIRMAN: Shall section 70 carry?

Carried.

Hon. Mr. HARRIS: In connection with section 32 Justice has agreed with Mr. Fulton that the wording should be—"Manitoba, Saskatchewan, or Alberta."

The CHAIRMAN: Shall 32 carry?

Carried.

Hon. Mr. HARRIS: Then we come to section 80.

80. The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,

- (a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases,
- (b) the regulation of traffic,
- (c) the observance of law and order,
- (d) the prevention of disorderly conduct and nuisances,
- (e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of

- pound-keepers, the regulation of their duties and the provision for fees and charges for their services,
- (f) the construction and maintenance of water courses, roads, bridges, ditches, fences and other local works,
 - (g) the dividing the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone,
 - (h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band,
 - (i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section sixty,
 - (j) the destruction and control of noxious weeds,
 - (k) the regulation of beekeeping and poultry raising,
 - (l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies,
 - (m) the control and prohibition of public games, sports, races, athletic contests and other amusements,
 - (n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise,
 - (o) the preservation, protection and management of furbearing animals, fish and other game on the reserve,
 - (p) the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prescribed purposes,
 - (q) with respect to any matter arising out of or ancillary to the exercise of powers under this section, and
 - (r) the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days or both fine and imprisonment for violation of a by-law made under this section.

Mr. Applewhaite raised the question of whether or not the band council would have authority to devise its own procedure for its council meetings. Justice is of the opinion such power could be granted by regulation under section 79.

The CHAIRMAN: Shall the section carry?

Carried.

Mr. BLACKMORE: Mr. Chairman, I have a note that 78 is to stand? Did the committee deal with that while I was unintentionally absent the other day?

Hon. Mr. HARRIS: We did deal with it—if you were absent. We restored the right of decision to the Governor in Council on the recommendation of the minister. The section as now amended reads: "The Governor in Council may set aside the election of a chief or councillor on a report of the minister that he is satisfied that—"

The CHAIRMAN: Is that agreeable?

Agreed.

Hon. Mr. HARRIS: The next is section 86(2), but I see that Mr. Gibson is not here and we can deal with that later.

The CHAIRMAN: Next is section 91.

91. (1) No person who is

- (a) an officer or employee in the Department,
 - (b) a missionary engaged in mission work among Indians, or
 - (c) a school teacher on a reserve,
- shall, without a licence from the Minister or his duly authorized representative, trade for profit with an Indian or sell to him directly or indirectly goods or chattels.

(2) The Minister or his duly authorized representative may at any time cancel a licence given under this section.

(3) A person who violates subsection one is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.

(4) Without prejudice to subsection three, an officer or employee in the Department who contravenes subsection one may be dismissed from office.

Hon. Mr. HARRIS: The question was raised, I think, by the clerk as to whether the words "In the department" should read "of the department", and the answer is that "in" is correct. It appears that civil servants are officers and employees of His Majesty in the department.

The CHAIRMAN: Shall the section carry?

Carried.

Section 92:

92. A person who, without the written permission of the Minister or his duly authorized representative,

(a) removes from a reserve

(i) minerals, stone, sand, gravel, clay or soil, or

(ii) trees, saplings, shrubs, underbrush, timber, cordwood or hay, or

(b) has in his possession anything removed from a reserve contrary to this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

Hon. Mr. HARRIS: Mr. Applewhaite raised the question as to whether under (b) the word "knowingly" might be inserted. The answer is since this is a penalty clause the magistrate or person trying the charge has the freedom of deciding whether there was in fact mens rea, as they say, and can import the word "knowingly" if he wishes to do so.

Mr. BLACKMORE: Would there be any objection to putting "knowingly" in there?

Hon. Mr. HARRIS: Yes, because it alters the normal criminal law procedure and understanding as to the basis of conviction.

The CHAIRMAN: Shall the section carry?

Carried.

Section 116:

116. An Indian child is not required to attend school if the child

- (a) is, by reason of sickness or other unavoidable cause that is reported promptly to the principal, unable to attend school,
- (b) has passed entrance examinations for high school,

- (c) is, with the permission in writing of the superintendent, absent from school for a period not exceeding six weeks in each term for the purpose of assisting in husbandry or urgent and necessary household duties,
- (d) is under efficient instruction at home or elsewhere, within one year after the written approval by the Minister of such instruction, or
- (e) is unable to attend school because there is insufficient accommodation in the school that the child is entitled or directed to attend.

Hon. Mr. HARRIS: Mr. Applewhaite asked the question about children being required to attend school beyond passing the entrance to high school. It is not a question of entrance but of age; in Quebec it is fourteen years; in Ontario, sixteen years, and in other provinces it varies between fifteen and sixteen. The practice is children may be excused from attending school for special reasons after entrance; for example, employment, required at home, et cetera.

The CHAIRMAN: Shall the section carry?

Carried.

Hon. Mr. HARRIS: That leaves section 11, the question of the validity of marriages, section 86, and Mr. Applewhaite's amendment. We can deal with the latter first, that is, section 29:

Recognizing in a general way what Mr. Applewhaite has said, that we have a function to perform quite independent of that of the Department of Justice, I think we should qualify it a little by saying generally that our function is to determine what we want done and it is their function to do that, and they appear to have given the opinion that this section did, in fact, carry out our intention. We have consulted them since the amendment was made and their answer is that if qualifications of that kind are to be introduced into section 29, similar qualifications will have to be introduced into many other sections in the bill, else those words in section 29 will cause a doubt as to the meaning of the other sections. They think they have carried out the purpose of covering all reserve lands in section 29.

The CHAIRMAN: Any comment, Mr. Applewhaite?

Mr. APPLEWHAITE: I am not convinced, but if the rest of the committee is, I am satisfied.

Mr. BLACKMORE: Mr. Chairman, could the minister give us an idea as to how this sort of stipulation has worked out in the past? Has the interest of Indians always been protected under a similar clause to this in the old Act?

Hon. Mr. HARRIS: The answer would have two parts to it: first, has there been absolute protection against seizure by legal process, and I think the answer to that is yes. The alternative, perhaps, is whether it is in the interest of the Indian to have that absolute protection. We have had some discussion—there was some discussion at the investigating committee—as to whether this was a restriction on the credit of the Indian and I think everyone agrees that if his possessions, except in the case covered by conditional sales agreements, are not subject to legal procedure, it stands to reason his chances of obtaining credit are limited.

Mr. BLACKMORE: My observation on that question, I think, has been expressed once or twice. I believe the Indian's credit should be guaranteed in some other way. I think the department should allot a portion of the revolving fund to be set aside for that purpose, and if that were done it would be far better. There is no doubt that the Indians must be provided with the means of obtaining credit. The lack of credit is felt keenly on the reserves and many men there could do a great deal more to help themselves if they could only get a little credit.

Hon. Mr. HARRIS: As I said the other day, we have drawn to the attention of the agents the revolving fund item and have told them it was there for use and was not something to be protected from use.

Mr. BLACKMORE: And one of the uses would be to guarantee credit?

Hon. Mr. HARRIS: Oh yes.

The CHAIRMAN: What is your wish, Mr. Applewhaite?

Mr. APPLEWHAITE: To put the amendment.

Mr. BLACKMORE: Just before the amendment is put. If provision for that purpose is made out of the revolving fund then there can be no reason why Mr. Applewhaite's amendment should not be inserted because it could not work against the credit of the Indians, could it?

Hon. Mr. HARRIS: Well, it may be that you would be restricting the power and authority of the Governor in Council to obtain repayment of the money that he owes under the revolving fund.

Mr. BLACKMORE: If the idea in this section is to protect the department, I can understand, but if the purpose of the section is to strengthen the position of the Indian seeking credit, and the validity of the suggestion embodied in Mr. Applewhaite's amendment should not be accepted, then I still can see no reason why the Indians' credit should not be guaranteed by the department and at the same time why protection should not be afforded the Indians as regards their lands. It seems to me in a general way that as the Indians develop their economic activities, as they undoubtedly are going to do because of many factors, they are going to require much more flexibility in respect of credit, but it seems to me they will at the same time have to have much more protection against possible encroachments on reservations. I may say that I would like to see that the right of the Indian to have his reserve maintained inviolate should be protected by every conceivable means, and as Mr. Applewhaite's amendment will aid in that direction I certainly will recommend it to the department.

The CHAIRMAN: You realize we will have to go over many other sections of the Act to make similar changes.

Mr. BLACKMORE: I think that would be a very minor matter considering the advantage which might accrue.

The CHAIRMAN: If it is an advantage.

Mr. BLACKMORE: I beg your pardon?

The CHAIRMAN: If it is an advantage.

Mr. BLACKMORE: I think there is no question of its being an advantage. I hope we can all be impressed—I may be a little extreme—but I hope we become impressed with the fact that the Indian's reservation has been set aside as a refuge to which Indians might retreat as long as refuges are needed, and consequently the Indian reservations should be maintained inviolate for future generations.

Mr. APPLEWHAITE: There is a very simple way out and that is to have an embracing definition of reserve land in your definition section.

The CHAIRMAN: What is that, Mr. Applewhaite?

Mr. APPLEWHAITE: There is an alternative and that is to have an all-embracing definition of the expression reserve lands in the definition section.

Hon. Mr. HARRIS: What would it be, "reserve lands are all lands in a reserve?"

Mr. APPLEWHAITE: I think it should be more specific than that so as to make it clear to sheriffs and others who are perhaps not Supreme Court judges that lands are still reserve lands even though they have been allocated to the exclusive possession of individual Indians. I do not think that has been made secure in the Act—that is the point that is worrying me.

Mr. WOOD: It is my opinion, Mr. Chairman, that the amendment will weaken this clause. As Mr. Blackmore points out, he is interested in credit for Indians yet this does not refer at all to chattels of any description, it just refers to land. I believe the wording of the clause as it stands is better than it would be if the amendment were adopted.

The CHAIRMAN: Are you ready for the question?

All those in favour of the amendment please say yes, those opposed say nay. I think we will have to have a showing of hands.

Mr. WOOD: Could you read the amendment again, Mr. Chairman?

The CHAIRMAN: The amendment reads: adding after the word "lands" the words: "whether held under certificate of possession, certificate of occupancy or by the band or otherwise".

All those in favour of the amendment will please raise their hands. All those opposed to the amendment.

I suppose I have the right to vote on a tie. I declare the amendment has been lost.

Shall section 29 carry?

Carried.

Hon. Mr. HARRIS: Then, let us revert to section 11.

11. Subject to section twelve, a person is entitled to be registered if that person

- (a) on the twenty-sixth day of May, eighteen hundred and seventy-four, was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordinance Lands*, chapter forty-two of the statutes of 1868, as amended by section six of chapter six of the statutes of 1869, and section eight of chapter twenty-one of the statutes of 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada,
- (b) is a member of a band
 - (i) for whose use and benefit, in common, lands have been set apart or since the twenty-sixth day of May, eighteen hundred and seventy-four have been agreed by treaty to be set apart, or
 - (ii) that has been declared by the Government in Council to be a band for the purposes of this Act,
- (c) is a male person who is a direct descendent in the male line of a male person described in paragraph (a) or (b),
- (d) is the legitimate child of
 - (i) a male person described in paragraph (a) or (b), or
 - (ii) a person described in paragraph (c),
- (e) is the illegitimate child of a female person described in paragraph (a), (b) or (d), unless the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered, or
- (f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

Colonel Harkness wanted additional information about the recognition or otherwise of marriages by what might be called custom of the band or something of that kind. I gave an interim answer at the time, and have here a rather substantial file on the subject which I will be glad to show him or any other member of the committee. I do not think there is any point in trying to incorporate it all into the record. In a general way it can be said that all provincial governments have provided for certain formalities. In almost every provincial

Act, if not every one, there is a saving clause which states that if some of these formalities have been omitted but if in other respects they have been met, and if in fact it would appear that the marriage had a permanent status the formalities which have been omitted might not necessarily vitiate the marriage. The practice in the department and in justice when dealing with this problem has been to take a view with respect to departmental matters—that is band membership or something having to do with welfare—which would tend to uphold marriages wherever possible; and the official answer is that in every case we would have to refer the matter to justice for determination. But, generally speaking, where there are no complications, such as a second marriage, we do where there are infants concerned or property matters involved recognize the marriage in preference to not recognizing it.

Mr. APPLEWHAITE: May I ask one question? What has been the position taken by the department with respect to the legitimizing children—illegitimate children—in cases where the parents married subsequent to the birth?

Hon. Mr. HARRIS: I think in every provincial jurisdiction now the subsequent marriage of the parents permits the legitimatizing of the offspring as though they were born legitimately. We have followed that provincial law and will insist on doing it.

The CHAIRMAN: Carried.

Hon. Mr. HARRIS: That leaves section 86, and my understanding was that Mr. Gibson was opposed to subsection (2).

86. (1) Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection two of this section and to section eighty-two, the following property is exempt from taxation, namely,

(a) the interest of an Indian or a band in reserve or surrendered lands, and

(b) the personal property of an Indian or band situated on a reserve, and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property or the succession thereto if the property passes to an Indian.

(2) Subsection one does not apply to or in respect of the personal property of an Indian who has executed a waiver under the provisions of paragraph (f) of subsection two of section fourteen of *The Dominion Elections Act, 1938*.

Mr. APPLEWHAITE: Yes.

Hon. Mr. HARRIS: I made an explanation at that time and there was some comment and the matter was left over for further decision. I can only repeat what I said then. We had thought last year when we gave the Indian the vote that it would not be necessary to insert this section in the Indian Act, and in revising the Act this year we again attempted to remove it, not because of the nature of the content, but simply because it did not appear to have much to do with the Indian Act; but we found that we could not do that. There is a principle involved, namely, the necessity of the Indian to sign a waiver of his tax exemption in the Indian Act before he is allowed to vote. That has been provided for by the Dominion Elections Act proper. It might be held, however, that any waiver signed under the Elections Act might only be for the purposes of that Act and that tax exemption might be claimed under the Indian Act should this subsection not be in here; and we have come to the conclusion that it would have to remain as subsection (2) of section 86.

Mr. BLACKMORE: Is not the meaning of subsection (2) there that once he signs a waiver under the Dominion Elections Act he would lose the privileges which would otherwise extend to him under this section 86; is not that the interpretation of this section?

Hon. Mr. HARRIS: May I preface that by saying this. Some Indians claim, although there is no decision of any court to substantiate the claim, that they have rights of tax exemption provided for by treaty. As I say, here is no court which has so held. The only tax exemption which the Indian enjoys is that contained in this section of the Indian Act, and it was thought proper that if they should be entitled to vote under the Dominion Elections Act they should be placed in a position of equality with non-Indians so that they should not be entitled to vote while enjoying that tax exemption at the same time. Now, before the investigation committee there were many Indian representatives opposed to the vote or opposed to it if it meant the loss of certain rights they had or claimed to have; and in revising the amendment to the Dominion Elections Act we recognized that some of them would resent having the vote forced upon them; so we provided that it was entirely a matter of their own choice, if they felt they were losing certain rights they had which were more valuable than exercising the vote in the federal elections they should have the right to make that choice; and we have provided that the Indian does not have to vote if he does not want to do so, and thereby we are continuing the advantage of this tax exemption in the Indian Act. Alternatively, if he wishes to vote he may do so on precisely equal terms with non-Indians; that is, without enjoying the tax exemption of this section; and we think that subsection (2) of this section and the amendment to section 15 of the Dominion Elections Act has that result; so that the Indian now has lost nothing that he had before if he does not vote.

Mr. BLACKMORE: Well, Mr. Chairman, this is a matter which deserves most earnest and serious consideration. Is it really not a question of what would be in the interest of the Indian? Should we not give him the right to vote along with an actual guarantee that he would not lose anything in the nature of these rights by so doing? It seems to me that our aim and object is to encourage the Indians to come out and be one with us, and in doing that we do not want them to suffer any loss; but we do want them to come to the state where they will feel that it will be in their interest to come out and participate freely and become one with us. We do not want to threaten them with any loss of privilege they now enjoy. My idea would be that if we encourage them to do that the time would come within three or four generations when the Indians would be so completely at home moving around among non-Indians that these tax exemption and other considerations will cease to bulk large in their minds. They are not, it seems to me, getting very much in the way of exemption so far as taxation is concerned. As a matter of fact the Indian, like everyone else, pays his share of such things as the sales tax, the luxury tax, the gasoline tax, and taxes of many kinds; really, the only exemption with respect to taxation which he enjoys is that which relates to income tax.

Hon. Mr. HARRIS: Mr. Chairman, as Mr. Blackmore has indicated, there was very long heart-searching consideration of this section before it was put in. But the position, I can only repeat, is that we have three groups of Indians. We have a group who refuse to have anything to do with a vote, on any terms whatever; they were opposed to voting, they were opposed to other Indians demanding the vote. In the alternative you had the Indian who demanded the vote. In between you had the other group, which I think represented by far the larger number of Indians whose attitude was one of indifference; who said, in effect, we would like to take part perhaps, perhaps we would not, but the paramount thing is to retain our privileges as we now have them. Well, I think the solution here is the only solution in the light of their position. we must take the

Indian at face value. The one who does not want to vote, either because it is a matter of principle with him not to take part in national proceedings, is still protected. The one who wants to vote has that right on the basis of equality with non-Indians. He, however, can make his choice as to the advantages of voting or not voting. Now, on the question of equality of status, I think we would be granting the Indian a false status for joining in our proceedings if we granted him a privilege not enjoyed by others. We must remember that the Indian has confronting him someday the exercise of all the ordinary activities of Canadian citizenship and we would be doing him an injustice if we gave him that now on a higher level than the rest of us enjoyed because some day we would have to bring him down to the level of the rest of us and it would not be fair to him. Therefore, as I suggested a little while ago, this section meets the wishes of all three groups of Indians; in other words, they can have it on an equality of status with us, or they do not need to if they feel that they do not want to as a matter of principle, or that they should not as a matter of economic advantage.

Mr. BLACKMORE: Mr. Chairman, I appreciate the minister's very careful and full statement on this matter; however, I feel that at this stage we should do everything we can for the Indian, but at the same time we should protect whatever rights are his. That is really what it amounts to; and, I think one of the fundamental reasons that actuates me—I cannot exactly put it into words—is that the Indian, after all, is at a disadvantage in many respects. I think we all grant that. Now, in so far as those disadvantages can be removed or compensated for, I think that should be done. As I see it, that is one of the important considerations in reviewing this matter, but at the same time we have to bear in mind that the Indian inevitably pays a lot of our taxes already; he pays the sales tax, he pays the excise tax, tariffs and all the imposts that bedevil our civilization and which the Indian is unable to escape from. About the only tax exemption which he really has is that with respect to personal income tax. Bearing in mind that he already pays so large a measure of taxation, to ask him to give up his rights if he takes the right to vote—to force it upon him—seems to me not quite fair. As I said, I am not yet prepared to put it into words—but it deprives the Indian of a measure of motivation which I think should be provided for him.

Hon. Mr. HARRIS: I might mention, of course, that this only applies to the Indian residents on the reserve who are not veterans or enfranchised. As you know, there is a preferred class of voter in Canada today, there is the Indian veteran and his wife; they enjoy this tax exemption without signing the waiver; and the Indians off the reserve have always voted anyway. This relates to the Indian on the reserve with respect to the income on the reserve. Now, I could make an argument which is precisely the opposite of that of Mr. Blackmore, that one of the penalties of civilization is that a great variety of taxes can be invented which are needed to maintain our position, and which will have to continue to be levied in order to have the advantages of what we consider a reasonably good state of society, and, as affording certain advantages to our citizens.

Mr. BLACKMORE: I might take issue with you on that.

Hon. Mr. HARRIS: I do not intend to argue about that here. But Mr. Chairman, a very primary lesson in citizenship must be the responsibility that goes with it in return for whatever advantages we may extend.

Mr. NOSEWORTHY: Does the acceptance of the right to vote affect the Indian under section 82 relating to money by-laws and other matters relating to Indians on a reserve?

Hon. Mr. HARRIS: Section 82 applies only where there is a band council in an advanced stage of development which has obtained the authority to pass these taxing by-laws.

Mr. NOSEWORTHY: But the Indians living on that particular reserve would have a vote with respect to such matters, but that vote would not subject them to the provisions of this particular section 86, subsection (2)? Are these not rather in the nature of municipal by-laws?

Hon. Mr. HARRIS: Well, these are in the nature of municipal taxes, if you want to use that phrase, and they have to be imposed by the particular band council. At the band election the councillors come up for election and to that extent would be the subject of a vote by the entire membership of the reserve.

Mr. NOSEWORTHY: That would be the only provision where the Indian living on the reserve would be subject to anything in the way of municipal taxation?

Hon. Mr. HARRIS: Yes.

Mr. NOSEWORTHY: Mr. Chairman, the real difference between an Indian living on a reserve who chooses to vote and one who does not is that the one who chooses to vote will be subject to income tax.

Hon. Mr. HARRIS: Personal property taxation is defined in section 86.

Mr. NOSEWORTHY: What special property taxation?

Hon. Mr. HARRIS: At the moment we have been discussing only the Income Tax Act as such. But if you will read continuing past line 23—

Mr. FULTON: Succession duties?

Hon. Mr. HARRIS: In section 86, it mentions succession duties as well, that the Indians will also be responsible for the payment of those taxes.

Mr. FULTON: Along with Mr. Blackmore, I appreciate the minister's position and the frankness and care with which he has expressed it here.

But with respect to the Indians, let me put it this way: I think that if you are dealing with people who are right at a comparable stage of education and civilization with our own, then the logical and legalistic approach which the minister has taken—

Hon. Mr. HARRIS: You mean humanitarian.

Mr. FULTON: Well, I shall let my words stand for the moment. It would not be open to any objection. But the fact is that we are not dealing with a comparable people in all respects.

The CHAIRMAN: There is no question of that.

Mr. FULTON: As Mr. Blackmore has said, we are trying to bring them along.

The Indians feel that when the white men came here and took over the country, in compensation to the Indians the white men set aside certain tracts of land and established privileges which the Indians could enjoy. The white men said: "These will be yours in perpetuity in compensation as a measure of compensation for the losses which you otherwise have suffered and for the restrictions which have been placed upon your children. The white man is here and he has in effect taken over the rest of the country".

The Indians now say: "We cannot understand why you now say to us: We would like to bring you up to a level equal to that of the white man and give you the vote, when the first requisite you impose on us for the use of that right is the loss of privileges which you previously guaranteed to us in perpetuity".

In other words, it opens the question of the whole basis of your approach to them. You say: "We now want to make the Indians equal". And when you base that in so far as the vote is concerned on the requirement that in getting

that privilege they must give up other privileges which were promised to them in perpetuity, there is something on the other side which is very hard to understand.

I appreciate the force of what the minister has said and the logic of his position. But I think it would be more logical and fairer if we were dealing with people who were, in other words, on an absolute basis of equality to us. But as it does not mean all these things to the Indians, I think there is a good deal to be said for Mr. Blackmore's position, that we should encourage them first to take the vote and then continue the process which is now starting and to accelerate it, I mean the process of education, in the hope that as the Indian advances, as a result of that program he will come to see of his own accord that it is not logical and that there should not be one group with special privileges over and above other groups, and that he would then say: "We understand it".

He would be in a frame of mind where he would understand the logic of that approach which, at the moment, I do not think he does. At the moment I am concerned with the reasons in the mind of the Indian. He says: "You want to make us equal, but you say to us that you will take away something which we otherwise expected to enjoy in perpetuity."

Hon. Mr. HARRIS: You are free to answer their argument. You say to the Indian: "We want to make you equal."

Mr. FULTON: In respect to the vote.

Hon. Mr. HARRIS: We want to make him equal in every respect. We want to assist him economically. We protect him for that purpose. We are trying to raise his standard of living. But having said that, we have never gone further and said: "We won't include something the white man has not got." We do therefore want to include the equality of the white man. We are not going to promise to give him something that the white man does not have.

Mr. FULTON: I appreciate your logic, but I am putting forward the argument which the Indians would put forward on their own behalf.

We must admit there are other respects in which the Indian is less qualified, and will continue to be less qualified, less equal, and at a disadvantage as compared with the white man.

I know the intention is sincere to bring the Indian up to the position where he will be absolutely equal, but he has not yet been made so absolutely. He does not yet enjoy all the privileges of the white men. There are other respects in which he is less privileged than the vote; yet you have chosen this one privilege and said that while you are going to make him equal in this one privilege, yet you are going to take away from him other privileges.

I think there is a good deal to Mr. Blackmore's approach; and if we give him the vote—I am not saying in logic, but in fact, in dealing with Indians, if we give him the vote, and then continue the process in other respects to which reference has been made in the committee, I think in time the Indian will arrive at the point where he says: "We now understand the logic of your argument and we agree with it and we are prepared to be put on an absolute basis of equality."

Hon. Mr. HARRIS: I have two answers to make. First, it is true that the Indian is under a disability in some respects. But in other respects he is at a distinct advantage over non-Indians.

Second, there is no illusion about Indian status. The Indian is quite aware of his advantages under section 86. He does not think that section 86 is a guaranteed right. He knows it is part of the statute. He knows that no court has ever held that the Indian has tax exemption otherwise than is provided for in the Indian Act.

Mr. FULTON: He thinks that is sufficient.

Hon. Mr. HARRIS: Yes. But he also knows it is a privilege granted by parliament, not something granted to him by a treaty.

I must say this is all subject to the peculiar situation in your own province, Mr. Fulton, but that is another matter.

The Indian is quite aware of the fact that if we are looking forward, as perhaps your argument would indicate, to the time when having gotten the Indian to participate in our elections, we will then suddenly say to him: "Now you have full right; you have greater equality than we have; we are going to take away from you extra privileges because you now vote."

He would not go along with your argument because that would lead to the elimination of his tax exemption. We have provided the other method. We have maintained tax exemption if he insists on it. That is the protection we are giving the Indian.

Mr. FULTON: Your approach to the question leaves it open to him. He has the hope that we are not going to force it on the Indian, and that eventually, voluntarily he will become enfranchised.

If that hope is realized, and if he takes the vote voluntarily, then your illustration with respect to taxation would follow. You still have it that it would be a voluntary process. It would not be necessary if the hopes of our program are eventually realized, or if you should say to him: "Now you have the vote, it is your privilege to accept the obligation to pay taxes." It would come about as a result of the other aspect of the program.

Hon. Mr. HARRIS: Enfranchisement of the Indian is not progressing. At first it was thought that it would. But the Indian wished to live on the reserve. Until recently or in fact until this bill is passed there has been practically no practice which would permit the Indian to become enfranchised and remain on the reserve.

Indians prefer to live with their own people under their own band council rather than to become enfranchised and go abroad. That is our experience. I have no doubt it will continue to be the case. So if you are looking to voluntary enfranchisement to bring about a gradual relief of the Indian from the Indian Act, I do not think it is to be expected at the moment.

On the other hand, as the Indians hold these views, we do not think they should be deprived of that privilege which they are now capable of exercising simply because they choose to live on the reserve. It seems to me to be illogical and contrary to our conception of liberalism, spelled with a small 'l', when we have these fine people, these adults who are capable of voting, that we should deprive them of the right. That is why we have given it to them.

Mr. NOSEWORTHY: For a consideration.

Hon. Mr. HARRIS: No, not for a consideration, because they have not got this exemption except as parliament wishes to give it to them. The position would be entirely different if they had it guaranteed, if they had a treaty or an agreement which gave them tax exemption, but they have not.

Mr. CHARLTON: They feel that they have, Mr. Chairman.

Hon. Mr. HARRIS: They feel that they have.

Mr. FULTON: And especially in British Columbia.

Hon. Mr. HARRIS: Everything is subject to the British Columbia consideration. But my point is that so long as they have not these rights, but only a privilege granted them by parliament, they should be considered as ordinary Canadian citizens and not be granted the right to vote at federal elections in priority to you or to me.

Mr. FULTON: Perhaps we have a reasonable difference in view. If the Indian were now qualified in status, I would say your answer to the argument would be a natural one. But as applied to an Indian whom we are trying to

apply it to, it does seem to attach a condition to this privilege which we are trying to get him to accept. I do not think it is an argument which the Indian will understand and will be able to follow.

Hon. Mr. HARRIS: I do not think there is an Indian in the country who would not understand it. If he is married, has two or three children, and is earning more than \$3,000, he should not be in opposition to contributing to the maintenance and security of the state, if in return, he enjoys the benefits.

You are dealing with a class who pay income tax. But Indian families are large and exemptions are high. It is true that tax exemption may not always be on the generous level it is at the moment. That is only a matter of detail. But the number of Indians who are in receipt of income which would be taxable and who are not developed to the stage which you are trying to describe is very small.

Anybody who is in receipt of that income has the intelligence and the wisdom to understand why he should not have an exemption from a right which is held by all other Canadian citizens.

Mr. APPLEWHAITE: I think that Mr. Fulton has put forward the viewpoint as expressed by the Indians exactly as the Indians expressed it at their conference.

I think there is one rather bad omission in that argument. But whether or not the Indians in this country feel that they were guaranteed tax exemption in perpetuity, it seems to me that by the same provision they were denied the right to take part in the affairs of this country by means of the vote in perpetuity. I suggest that not only was tax exemption given as a compensation given for the loss of lands and so on, but it was also in part compensation for the refusal to allow them to take part in the government of the country. I think we should take that point into consideration.

There is one other thing which I should like to say and it is very much of a generality. In this day and age amongst non-Indians there is a great deal too much emphasis being placed upon "your rights" and "your privileges" and not enough upon "your responsibilities" and "your duties". If we are trying to educate the Indian to a position where we feel he will be a worthwhile voter and citizen of Canada then I suggest we do not follow that line too strongly.

The other question which is worrying me at the moment is while the Indian Act definitely applies to Indians and Indian affairs, the provision under which they vote does not come under the Indian Act. That comes under the Dominion Elections Act. Now what is the position between the two Acts if we drop subsection (2) of 86 without having some section of amendment in the Dominion Elections Act—

Mr. FULTON: Which is up for revision this year.

Mr. APPLEWHAITE: Yes.

Hon. Mr. HARRIS: I went into that the other day in response to your suggestion or statement, and the positive statement that the waiver would act as a waiver of a taxation exemption must be contained in some section. It is not now in the Dominion Elections Act and logically and every other way, it should appear here in the section that grants taxation exemption.

Mr. APPLEWHAITE: Am I right then that in its present form the Dominion Elections Act provides for the signing of a waiver but there is not statutory authority which makes that waiver effective.

Hon. Mr. HARRIS: That is right. It provides for an Indian name being placed on the voters' list if he has signed a waiver but this is the section that then operates to waive the tax exemption.

Mr. BLACKMORE: For the record would the minister mind explaining for the benefit of the Indians who will be reading this just what is meant by the waiver? There will be Indians who will not know and would the minister mind explaining?

Hon. Mr. HARRIS: Forms were sent out to all agencies last September and October. I will put one in the record.

(See Appendix A.)

The Indians do understand that they have been granted the taxation exemption mentioned in subsection (1) of section 86 and the waiver will mean that should they sign that document they will no longer be entitled to tax exemption on personal property as described in section 86—

Mr. CHARLTON: (b)?

Mr. BLACKMORE: (a).

Hon. Mr. HARRIS: The whole of section 86.

Mr. NOSEWORTHY: What we really are doing is showing that we want the Indians to become citizens. We want them eventually to become enfranchised and we are giving them the right to vote, but in doing so we are taking away some of the privileges that they now enjoy as Indians. If they become fully enfranchised we take away all the privileges they enjoy as Indians and place them on exactly the same footing as the white man. The Indian is in the position of a lot of people I have heard of, in view of the fact that the Indians were the original owners of this country; in view of the fact the white man took the country from them; in view of the fact we put them on reserves—in many instances reserves the white man did not want and could not use, some of the poorest sections in some parts of the country; in view of the fact that in connection with some of these reserves we have permitted white people to filch some of the best sections. I think we could be sufficiently generous, in view of all the past, to encourage them to vote, to accept citizenship, and to still retain some right as Indians by virtue of the fact that they were here before we were. I think that would be the generous and correct method to follow if we really wanted to encourage them to become Canadian citizens.

I see no reason why an Indian becoming a full citizen should not, by virtue of the fact that he is an Indian, be entitled to some special privileges. I think he is morally entitled to them.

Hon. Mr. HARRIS: Well, of course you have stated the case for some form of consideration for the Indian under the circumstances.

I will not agree with all that you have said because I do not agree that at any time a department of the government of Canada has permitted white men to filch the best part of reserves.

Mr. NOSEWORTHY: Well, I have a group of Indians who want to come in here and who will show you that the best part of their reserve has been taken away from them over the years.

Hon. Mr. HARRIS: Yes, but they cannot show that, you see.

Mr. NOSEWORTHY: Well it is pretty difficult for an Indian to show anything against a white man.

Mr. FULTON: There is the question of the water rights on the Kamloops reserve which has never yet been settled, but there is at least a 50 per cent argument in favour of the Indians that they have lost their water rights on that reserve.

Hon. Mr. HARRIS: Yes, but I do not think that we should take it for granted that the complaints made by Indians and non-Indians with respect to this or that particular thing are necessarily precisely as reported. Now, I do not mean to reflect on any Indians when I say that but in the matter that Mr. Noseworthy has in mind, I am satisfied that he does not know the facts. It is a long and complicated story on which I could read you a memorandum and when it was all over and done with anyone would agree that while it might look like a jumble it does not bear out the definition of the white man filching from Indians.

Now, if you feel that this parliament now owes something to the Indians, such as a vote in return for some of these past misdemeanors so-called, we would have to go to the trouble of examining them all to see if in fact there is any basis for them.

Remember, from the very beginning of the Indian Act the Indian has been suing the government of Canada to establish his rights and where the court has agreed with him that he has rights he has got them; where the court says that he has not got rights, is it for this committee to say in effect that the court was wrong?

Mr. NOSEWORTHY: There is no dispute in court or out of court that the Indians were here before the white men?

Hon. Mr. HARRIS: That may well be and I am not going to dispute it but I do dispute that living under the jurisdiction of the parliament of Canada it might just as well say there are various grades, starting with the Indian who has the absolute right to vote, and then with the early settler, giving him something else, and then the late comer would not have the right to vote—

Mr. FULTON: That is not the argument at all.

Mr. CHARLTON: It is well known that the Indian was given the right to vote at one time.

Hon. Mr. HARRIS: That is right.

Mr. CHARLTON: Back in the 1880's.

Hon. Mr. HARRIS: 1885.

Mr. CHARLTON: What was the reason given for taking the vote away from him? If that could be stated here it would clear the situation.

Hon. Mr. HARRIS: Well, it is a very simple matter although it takes a certain amount of explanation. The explanation will have to leave out some of the political arguments made at the time. The vote was lost to the Indian because in 1898 the then government decided that instead of having a federal system of making up voters' lists they should be made up by the provincial governments as had been the case prior to 1885. As it happened at the time the Indians were disqualified from voting by legislation of the various provincial governments. That is the answer.

Mr. FULTON: In effect if we were to simply give them back the right to vote without the necessity of signing the waiver we would be restoring the position, with respect to Indians voting rights, as it existed before 1885?

Hon. Mr. HARRIS: No, that is not true. When they were given the vote in 1885—

Mr. FULTON: I am sorry, I should have said before 1898—between 1885 and 1898?

Hon. Mr. HARRIS: No, when they were given the vote in 1885 it was on a comparable basis to a white man. They had to qualify for property holdings. It was an equality of status—it was not a privilege other than the white man had.

The CHAIRMAN: Shall section 86 carry?

Mr. FULTON: No, on division.

An Hon. MEMBER: Where is the division?

Mr. BLACKMORE: The question has been raised as to where the division is. I want a recorded vote and we will soon see where the division is. (Section carried on recorded vote.)

Hon. Mr. HARRIS: Mr. Jutras had a question in connection with section 11 and whether blood tests could be taken at treaty time by the medical officers of the Indian health services. We are looking into this and will inquire if it would be acceptable to the provincial authorities.

Now, before I am finished, are there any other questions?

Mr. NOSEWORTHY: I do not know whether this is the place to raise the matter but there is the question of the preamble to this Act that would set forth its purposes. Certainly anyone reading this Act would have difficulty in determining just what is our objective as far as the Indian is concerned. I suggest that a preamble would set forth what we propose to do here with the Indians under this Act.

Hon. Mr. HARRIS: Well, the Act, the whole 125 sections, sets out what we are trying to do for the Indian. You could not boil it down into a preamble.

Mr. NOSEWORTHY: We have stated here again and again that it is the purpose of the department to eventually bring the Indian to a point where he becomes enfranchised and to all intents and purposes the same as a white person.

The CHAIRMAN: Is that the purpose of the Act or is it the effect of the Act?

Mr. NOSEWORTHY: I take it that it is the goal to be achieved under the Act. I think it should be made clear.

Hon. Mr. HARRIS: The answer I have been making to the many representations that we should have a preamble is two-fold: (a) the custom of having long preambles has somewhat gone out of use in parliamentary matters; and (b) the original Indian Act had in it as a subtitle: "Being an Act for the gradual enfranchisement of Indians". So that while they may state the purpose of the Act I think if we tried now to state the ultimate intention we would get into a debate as to whether the words did convey the intention we all had, and it is much better to continue section (1) just as it is in the existing Act.

Mr. NOSEWORTHY: In other words, you feel that there are sections in this bill which would not be in line with that intention, that you would not want to state that intention in view of the nature of certain sections of the bill.

Hon. Mr. HARRIS: No, I would not want to say that. The bill now is far more progressive than the existing Act.

Mr. FULTON: There are three questions I would like to raise, Mr. Chairman. The first is in connection with the position of the British Columbia Indians. In the House I set forth the position taken by a large number of Indians there who feel at any rate because their position is different in many respects that there should be a separate part of the Act dealing with British Columbia Indians. Very briefly stated their argument is two-fold. Firstly, we are in a different position—our position is not secured by treaty, but under an altogether different arrangement, and secondly, that being the case, there are circumstances which might well be visualized where if we are left in with all the other Indians in Canada the position of the Indians of British Columbia will work out to our disadvantage. Secondly, there are cases where our progress might be speedier than that of Indians whose position is complicated by treaty and if we are to be put in under the Act governing all Indians we may therefore be held back in our progress as a result of that situation. That, very briefly, leaving out a lot of other things, is their argument. I would like to hear from the minister as to why it was decided there could not be or should not be a separate part of the Act dealing with British Columbia Indians.

Hon. Mr. HARRIS: In the first place we do not look upon the Indians as a peculiar problem in itself. They are problems as individuals and as bands here and there in Canada, so that what does apply to a band in British Columbia may not and probably does not apply to a band in the east. Nothing in this Act is intended to indicate that the Indians are a group of people distinct and having common problems throughout the Dominion, so that to that extent one would suppose, if we could agree with Mr. Fulton's contention, that we could examine the problem of the Indian of British Columbia as quite distinct from that of any other group. We can. There is no doubt that in some parts of British Columbia the Indian is more progressive and better educated than he is in some other parts of Canada, but if he is more progressive, the Indian

Act will not act as a restraint on him because of the wisdom of the government in introducing section 4 (2), which can be used in order to gradually remove the restrictions of the Indian Act from any band or any group of bands as their progress indicates its desirability. Now, I discussed at the conference the suggestion made by Mr. Fulton in the House a day or two before and it was not followed up, not because it has not merit—we recognize that there is a good deal to be said for looking at the Indians in British Columbia in a different way perhaps than the others because of the difference of their activities in most cases—but we think that in the Act and particularly in sections 4 (2), 64, 66, 80, 81, and 82 we can keep abreast of any progress that any group may make so that they will not be restrained.

The CHAIRMAN: Shall the preamble carry?

Mr. FULTON: There are two other questions I want to ask, Mr. Chairman. I ask this question in view of a letter I received from a lawyer in British Columbia who had a great deal of experience in this type of case to which he refers. I will read the letter:

Now that the Indian Act is under revision, it might be a good idea to suggest that the provision in the Act whereby a magistrate can demand of an Indian information as to where he obtained liquor on penalty of punishment if the Indian does not tell him, should be deleted.

My reason for this is that the usual answer is "some strange white man I met". If they do give a name it is rarely if ever the real supplier, the Indian knowing too well that if he names the supplier, his future source of supply would be cut off. In consequence, innocent parties are continually being charged with supplying, and are put to trouble and expense in defending themselves, and often they have never seen the Indian who has accused them in their lives before.

It must be apparent that the police can question Indians anyway, without as they have done, telling an Indian that he will have to stay in jail for eight days unless he tells them, in which case he tells them the first name that comes into his head.

Now, I have not been able to find any specific section of the bill which gives that power, yet this is a letter from a lawyer who knows that this is being done. What is the situation in that regard? Is there any amendment to the Act which we could introduce which would deal with the practice to which reference has been made?

Hon. Mr. HARRIS: There is certainly nothing in bill 79 which would make it an offence for an Indian to refuse to make an answer in any court, and the procedure in a magistrate's court is, of course, within the jurisdiction of the attorney general of British Columbia and I am sure if the lawyer were to confer with the attorney general it would be seen that no such a penalty has been imposed in bill 79 and probably the practice would discontinue.

Mr. FULTON: Somebody has pointed out to me that section 137 of the old Act did cover that point. The marginal note to that section is "refusal to state where intoxicant was procured." Perhaps I can shorten it down by asking if that provision has been eliminated in the new Act?

Hon. Mr. HARRIS: Yes.

Mr. FULTON: It is not in the new Act at all?

Hon. Mr. HARRIS: No.

Mr. FULTON: My next question is with reference to cattle trespass, on the subject of which representations have been made from British Columbia particularly, where provincial grazing lands adjoin Indian reserves and neither of them are fenced; that is, a general grazing reserve area is provided on which people quite legitimately turn out their cattle to graze on payment of a fee to

the provincial government. There is a danger, I think, in view of the provisions that when cattle stray on to Indian reserves the owner is liable to be penalized. I am putting forward here a request that was made to me that perhaps the Indian lands should be brought under the same provision as other lands and that some obligation to fence Indian lands should be made and then if cattle trespass on the reserve the liability of the owner would be incontestable. Now, I must say, though, that it has been pointed out to me that this matter has been treated, has been looked at fairly and so far as my correspondents are aware, no unfair liability has been imposed on the owners of cattle as a result, because the departmental officials have administered that section in a sane and sensible manner; but there is grave concern on the part of the Cattle-men's Association that at some future time that practice might not continue and they think they might find themselves in a bad position. I would like to hear from the minister—that is why I raise the question—as to whether cattle trespassing would come under a special section of the Act or whether it would be under the general section with regard to trespassing.

Mr. WOOD: Did you say the provincial government charges rent for pasture?

Mr. FULTON: Yes, so much a head for having the right to graze their cattle.

Mr. WOOD: Our experience in grazing land in Manitoba operates in this way; they fence their grazing land and they have no troubles there at all. Our experience with regard to grazing land in Manitoba is that they have their land all fenced and they charge so much for grazing.

Mr. FULTON: There is a good deal to be said on both sides but I would like the minister to make a reply, to say what the department's decision in that respect has been, because I know that has been brought to the attention of the department.

Hon. Mr. HARRIS: Yes, it has been drawn to our attention since I became minister. It should be borne in mind that the Indian pays the licence fee to the provincial government as well as the non-Indian, and that it is not possible to contemplate fencing Indian reserves. We can, in some cases, induce them to aid in the expenditure for building fences where there is a real need, having in mind the possibilities of trespass, but generally speaking it just is not possible to look forward to fencing these many reserves, particularly, in British Columbia. We have also pointed out, of course, that there have been no prosecutions of any non-Indian for his cattle straying on Indian land.

Mr. FULTON: On fenced Indian lands.

Hon. Mr. HARRIS: Yes; this is not to suggest that there have not been trespasses, but they have been adjusted by agreement between the parties. Nevertheless, we think it would be unfair to the Indian bands to expect them to go to that very great expense, because the non-Indian ranchman is aware of the limits of the reserves and should be on his guard to see that his cattle do not trespass on Indian lands. Now, I only conclude by saying that negotiations are often conducted in the best of spirits and these things have not given rise to anything like the difficulty they might.

Mr. FULTON: It appears to me there is more concern for the future rather than as the result of past experience. Your answer, then, would be you still feel that would be taken care of by the administration by good sense rather than by a change of the Act and a stipulation with regard to fencing?

Hon. Mr. HARRIS: Yes.

The CHAIRMAN: Shall the preamble carry?

Carried.

Shall the title carry?

Carried.

Anything further?

Mr. FULTON: Now, resuming the question, Mr. Chairman, as to whether or not we should hear from Indian representatives. I hope I am correct in saying that the feeling is we have made pretty good progress in getting through the bill and hearing the minister on what he had to say. There is some considerable time before the session might be expected to adjourn in view of other legislation which we know is coming down. With regard to hearing Indian representations, my feeling is still the same as it was at the beginning of the proceedings here: that if for no other reason than to make the Indians feel they have had a fair hearing and that this bill is the best bill that could be produced, I ask for a full consultation with them. We should hear from the Indians. My recollection of the motion that was presented and amended at the first meeting is that the consideration of that matter be deferred until after we hear from the minister. That has now been concluded and I think it is time now to go back to the original motion. For reasons I have said, and without repeating them, I think we should hear from the Indians, and I am prepared to submit a similar motion to that which was submitted at the beginning.

Mr. APPLEWHAITE: I wonder if I might ask the minister a deliberately leading question? If he declines to answer it will be all right. I wonder if the minister would give an undertaking that within a reasonable time after this Act has gone into operation—and I would say roughly not less than one year and not more than three full years—if he would undertake to hold a conference somewhat similar to the one held at the end of February, of Indians, representative Indians, to go over the Act and its working, with a view to discussing the Act as it has been found to operate, and that he would undertake to do that whether or not a parliamentary committee should be appointed?

Hon. Mr. HARRIS: Well, at the conference, and I think I mentioned this in my opening statement, the question was raised as to whether this conference should become an annual affair. I pointed out that I thought we ought to have a period of time in which to give the new bill a chance to operate and show its advantages or disadvantages and I suggested that one year would not be sufficient for that purpose. I went further and I said that in my opinion two years, or about that time, would probably show that certain amendments might be required; but, of course, I said we could make any amendments in the meantime that appeared desirable. Now, I did not go the step further, and tell the conference that they would be re-assembled in two years' time. But I am prepared to give the committee the assurance, within the limits stated by Mr. Applewhaite, that it would be the intention of this government to invite representative Indians to another conference similar to that held in February last.

Mr. CHARLTON: Now, Mr. Chairman, in saying this I do not mean anything personal as applied to the minister; but I still believe there are enough new powers in this bill that the Indians should be allowed to come here and appear before this committee before this bill is allowed to operate because there are powers in this bill, as you well know, that before the two year period is up will result in certain things being done which would be decidedly against the interest of the Indians; so, without any reflection on the minister in any way, I think something should be done to get their views at this time. I think it is only fair, to alleviate further suspicion on the part of the Indians, that they should be given an opportunity of coming here now and telling us their views, explaining how they feel regarding this new Act.

The CHAIRMAN: Do you realize this, Mr. Charlton? That you have been on the committee since it was first set up in 1946, and I believe that I am right in my recollection that you were on it in 1947 and 1948. As you will also recall, we did hear Indians from one coast to the other and we also visited—a

good many of us of that committee—a number of the Indian reserves, and we heard not only Indians but we heard others interested in Indian affairs; and we heard from doctors and professors and from educationalists—we heard everybody; and we must bring some—I don't want to say termination—but we must bring it to finality in some form by making a recommendation upon the matter we were called upon to consider and as we were asked to do by the House. In connection with the consideration of this particular draft bill we have before us, as you know, the minister brought in representatives of the Indians from coast to coast and he had a long conference with them. Now, we can go on indefinitely with the hearing of Indians and never do anything.

Mr. CHARLTON: I still think, Mr. Chairman, in view of the amendments brought forward, that there are still certain sections of the Act which do not comply in full with the wishes of the Indians.

Hon. Mr. HARRIS: I reported on those to you and we discussed them at the conference.

Mr. CHARLTON: Yes, that is so; but I do submit that the Indians at the conference did not have a chance to study completely the new bill with the amendments which we have made here.

Hon. Mr. HARRIS: No complaints have been made by any of the Indians to that effect.

Mr. CHARLTON: Have they had sufficient time?

Hon. Mr. HARRIS: As I said, they have made no complaints so far to me that they did not have sufficient time.

Mr. FULTON: There are at least two sections in connection with which I have reservations, and without repeating what I said in respect to them a short time ago, I do think that we should hear from the Indians as to their views on the sections and to see whether or not we can improve them without detracting in any way from the Act. Having in mind what the minister said in his statement, I think we should give the Indians the chance to discuss with us their views on the two sections, and others which I am sure that other members will have in mind. It is not as though we were now in the last days of the session, because, as perhaps you noticed from a recent statement in the press, we have at least six weeks before the end of the session, and possibly two months before the session comes to an end.

The CHAIRMAN: Is that a prophecy?

Mr. FULTON: Yes, you can take it for that if you wish. I think the committee should arrange for the hearing of Indian delegates. I move, that in addition to any other witnesses to be heard, the committee should call and hear evidence from representative Indian delegates on their desires and opinions with respect to bill 79. That motion, Mr. Chairman, is very similar to one which I made earlier except that I have left out any suggestion as to where the delegates should come from, as to how many there should be, so that the hands of the committee will not be tied by an expression of opinion in line with the motion I presented. I make no suggestion as to whether four, or fourteen, or how many delegates should be called, and that is the reason I have purposely left out any suggestion of the number which should be heard or where they should be called from.

Mr. BRYCE: Have you or the minister got any recent applications from anyone who wants to make representations before the committee; and, in asking that, I do not want you to go away back over the years. I just want to know whether any such requests had been received recently, a request asking for the right to meet the committee?

The CHAIRMAN: Mr. Noseworthy I think has two letters which he wants to bring to the attention of the committee.

Hon. Mr. HARRIS: There have been two requests to me from members of this House, as the result of correspondence with them. I have been asked by two of the members if it was my intention to invite the Indians to appear before this committee. My answer was, it was not; but that that was a matter for this committee to decide. I have had no request from any Indians.

Mr. FULTON: There have been no special problems brought forward?

Hon. Mr. HARRIS: No. There have been representations which have been incorporated in our records as we went along since we started.

Mr. BLACKMORE: It looks as though this might require a certain amount of study, Mr. Chairman; I wonder if we should suggest that you should adjourn the meeting?

The CHAIRMAN: No, no, we are intending to sit until one o'clock.

Mr. BLACKMORE: The members will want to have a chance to study this, don't you think it should stand?

Mr. SIMMONS: As the minister stated in respect to this Act, all the objections and submissions made by the Indians and others with respect to bill 79, are now before us, together with the report of the conference of representatives of the Indians held on February 28, March 1 and March 2 of this year. I am of the opinion that the new Indian Act should be put into operation without any further delay, and I do respectfully suggest that in view of the clear and concise explanations given by the minister and officials of his department that it will not be necessary to invite any further witnesses to appear before this special committee. Mr. Harris has clearly demonstrated that he brings to his duties a truly christian understanding of the Indians, and his ability to deal with them, as well as his evident and earnest desire to do a good job, has undoubtedly impressed every member of this committee and in fact every member of the House. What is even more important, he has succeeded in gaining the trust of the Indians themselves and I wish to take this opportunity of expressing my appreciation, and to extend my congratulations and compliments to the minister for the excellent job he has done in regard to Indian affairs. Now, Mr. Chairman, I would like to move as an amendment to the motion by Mr. Fulton, the following:

That—having in mind the desire of the minister to give this Act a trial of two years when it will again be considered for amendment, and

Having heard the evidence of the minister and departmental officials as to the submissions made by the Indians and others with respect to bill 276 of the 1950 session and bill 79 now before us, together with the report of the conference with representative Indians held on February 28, March 1 and 2, 1951, and

Having in mind the desire of this committee to bring into force the provisions of bill 79 now before us during the present session of parliament; this committee is of the opinion that no further evidence is now required for our purposes, but that we recommend that further consideration be given to the Indian Act in two years' time.

Mr. FULTON: Mr. Chairman, I wish to draw to your attention that what purports to be an amendment is a direct negative of my motion and as such is out of order. It is not necessary to bring an amendment to obtain an expression of opinion, or a so-called amendment, such an expression of opinion can be obtained by voting for or against my original motion.

The CHAIRMAN: Now, let us see, the motion is that there—

Mr. BRYCE: What about Mr. Blackmore's motion?

The CHAIRMAN: I have not any motion.

Mr. BRYCE: Yes, you have, Mr. Blackmore's motion that we adjourn.

The CHAIRMAN: Well, that is not in writing. The motion is, that in addition to any other witnesses to be heard your committee should call and hear evidence from representative Indian delegates on their desires and opinions with respect to bill 79. And the amendment appears to be, substitute after "that" of the main motion "this committee is of the opinion that no further evidence is now required for our purposes, but that we recommend that further consideration be given to the Indian Act in two years' time." I would think, especially that latter clause, would certainly be an amendment.

Mr. FULTON: May I point out the latter clause, the one which you have just read, is something which should be considered by way of a resolution when the committee has before it for consideration its report to the House. It is, in my submission, a direct negative of my motion which is now before the committee, that representative Indian delegates should be heard. The resolution presented by Mr. Simmons is not to hear Indian delegations but rather that this committee is of the opinion that no further evidence is now required for our purposes; which is a direct negative of the subject matter of my resolution; and I submit, therefore, it cannot properly be tabled as an amendment.

The CHAIRMAN: No, I do not think so. I think your motion is that you want to call and hear evidence right now. This amendment is that we don't do it now, but that further consideration be given to the Indian Act in two years time. To that extent it is an amendment, and I so rule. That has nothing to do with evidence or any representation.

Mr. FULTON: That is a matter which should be considered when we are drafting our report to the House. We might make a recommendation in our report to the House on a matter of this kind, but it is not a proper subject for a motion at this time at all. You have not called a meeting with respect to our report to the House.

The CHAIRMAN: My ruling is that this is an amendment.

Mr. FULTON: Then, Mr. Chairman, I must protest your ruling.

The CHAIRMAN: All those in favour of the amendment? Opposed?

I declare the amendment carried.

Mr. BLACKMORE: Could we have a recorded vote on that now, Mr. Chairman?

The CHAIRMAN: All right. Please answer as follows: all those in favour of the amendments will say "yes"; and those contrary will say "no".

(Recorded vote was taken at this point.)

Mr. NOSEWORTHY: Will the letter which I placed before the committee on the first day of our sessions be read to the committee, Mr. Chairman?

Mr. FULTON: Can we have a vote on the motion, Mr. Chairman?

The CHAIRMAN: The motion is that the—I thought you were talking about a motion to adjourn, Mr. Fulton. The motion as amended? Do you want to put that?

Mr. FULTON: I suppose that would be the correct and proper procedure. I do not know how it amends my motion.

The CHAIRMAN:

This committee is of the opinion that no further evidence is now required for our purposes, but that we recommend that further consideration be given to the Indian Act in two years' time.

All those in favour?

Mr. CHARLTON: Did he not suggest a change on the amendment?

The CHAIRMAN: Yes; and the amendment was that we strike out all the words after "that", and insert "this committee..." and so on.

Mr. FULTON: We voted on an amendment. I did not hear anything to that effect in the amendment and I challenge that we voted to that effect.

The CHAIRMAN: The amendment was—

Mr. FULTON: You moved an amendment to the motion which it was not, of course; and now we are having this difficulty.

The CHAIRMAN: Your motion was:

This committee is of the opinion that no further evidence is now required for our purposes...

Mr. FULTON: All right. Vote on the amendment.

The CHAIRMAN: Your motion is that after the word "that" all the words be stricken out and the following be substituted therefor.

Mr. FULTON: Who moved that? I did not hear that.

The CHAIRMAN: That is your motion.

Mr. FULTON: Whose motion? Not mine.

The CHAIRMAN: The amendment is that we amend it by adding this to it, and strike out that.

Mr. FULTON: That was never moved!

The CHAIRMAN: Now we have this amendment and you have heard the amendment. Do you want to have a revote on this matter? You have voted on the amendment:

This committee is of the opinion that no further evidence is now required for our purposes, but that we recommend that further consideration be given to the Indian Act in two years' time.

Mr. FULTON: I want a vote on the motion.

The CHAIRMAN: The motion will be:

That this committee is of the opinion that no further evidence is now required for our purposes...

Mr. NOSEWORTHY: Will you read the original motion, please?

The CHAIRMAN: The original motion was:

That in addition to any other witnesses to be heard your committee should call and hear evidence from representative Indian delegates on their desires and opinions with respect to bill 79.

And the amendment was that we strike out the words after "that".

Mr. CHARLTON: Where does that wording appear in the amendment?

The CHAIRMAN: The only thing in the amendment is the preamble, as given to me.

Mr. CHARLTON: It was an amendment to the main motion then.

The CHAIRMAN: It is the amendment.

Mr. FULTON: We have got ourselves into this fix as a result of your ruling, Mr. Chairman.

Mr. BOUCHER: Mr. Chairman, the amendment carried and we should vote on the motion as amended.

The CHAIRMAN: As we have it, the first motion is:

That in addition to any other witnesses to be heard, your committee should call and hear evidence from representative Indian delegates on their desires and opinions with respect to bill 79.

And the amendment was that we strike out the words after "that", and insert the clause:

This committee is of the opinion that no further evidence is now required for our purposes, but that we recommend that further consideration be given to the Indian Act in two years' time.

That is moved by Mr. Simmons.

Mr. FULTON: The words you have just referred to were not read. I think that would be substantiated by a reading of the record.

The CHAIRMAN: Would you move that we take up the whole question again?

Mr. FULTON: Very well, yes. It has now been clearly proven and shown that your ruling was in error.

The CHAIRMAN: I am trying to facilitate the business of the committee. I do not say it is an error at all. I do want to facilitate the wishes of the committee and if some of you feel that you were not voting on the proper motion and did not understand the motion, then we can re-open it. I do not think it is at all necessary. I think that everybody understood exactly what he wanted to vote on, and I think that you did too, Mr. Fulton.

Mr. FULTON: That is why I allowed the vote to proceed, because I knew it would show just how erroneous your ruling was.

The CHAIRMAN: I think that my ruling on the motion as amended will now be adopted.

Mr. FULTON: But you cannot rule on that sort of matter, Mr. Chairman. That can only be done by a vote of the committee.

Mr. NOSEWORTHY: Mr. Chairman, if you put the motion as amended, you must read the original motion plus the amendment, so that the record will show how contrary, or to what extent the amendment makes that motion.

The CHAIRMAN: The motion was:

That in addition to any other witnesses to be heard your committee should call and hear evidence from representative Indian delegates on their desires and opinions with respect to bill 79.

Now, the amendment was that we strike out the words after "that".

Mr. CHARLTON: That never appeared in the amendment.

Mr. FULTON: Is that included in the written amendment which you have before you, Mr. Chairman?

The CHAIRMAN: The written amendment as it appears before me has a preamble, and it has an operative part of which the most important part is—as I understood from Mr. Simmons, he did say, or intended to say—that it should be stricken out.

Mr. SIMMONS: I thought it would be clear enough to everybody.

Mr. BRYCE: Mr. Chairman, the trouble is this: "Dave" comes here with a motion and my friend knows that it is a motion, but he tries, as it were, to make it into an amendment.

Mr. CHARLTON: The one way to settle it, Mr. Chairman, is to have the record re-read.

Mr. BRYCE: He moves it as an amendment but it does not read as an amendment. Of course, it is not relative to the subject.

The CHAIRMAN: It is as pertinent as the motion originally made.

Mr. BRYCE: That is the trouble. You should leave it to some of us laymen to straighten it out.

The CHAIRMAN: I have before me a typewritten copy of a motion made by Mr. FULTON. It is merely the repetition of a motion made on the opening day of this committee, with a few lines stricken out.

Mr. FULTON: That is just what I said when I moved it, Mr. Chairman.

Mr. SIMMONS: I would be glad to make these alterations if it would satisfy the committee.

Mr. BLACKMORE: Mr. Chairman, would you entertain a motion to adjourn?

Mr. JUTRAS: Is it not a fact, Mr. Chairman, that the new amendment has been adopted and the decision of the committee has been taken? So there is no point in taking a vote on the other resolution, because in effect you would be taking a vote on a matter which has been decided already.

Mr. FULTON: That is my point. You were not moving an amendment at all, but a direct negative.

Mr. JUTRAS: That is debatable. You have many motions on many occasions, for example, to give the six month hoist. This is for two years, while the other would be for six months. In effect it is the same thing, yet it is always accepted.

Mr. FULTON: But it was not moved as a six month hoist.

Mr. JUTRAS: It was moved for two years.

Mr. FULTON: My motion was moved to get an expression of opinion on the subject of hearing Indian representatives.

Mr. JUTRAS: But the amendment was to wait two years.

Mr. FULTON: But it was not an amendment, but a direct negative.

The CHAIRMAN: Well, I have made a ruling on it.

Mr. CHARLTON: Mr. Chairman, in view of your ruling, I suggest that we take a vote on the main motion now and the record will show who was in error.

Mr. JUTRAS: You are suggesting that we take a vote on the ruling of the chairman and not as to whether we should hear representations or not. Your suggestion is to that effect?

Mr. NOSEWORTHY: If we are going to vote on the motion as amended, then, Mr. Chairman, you must read the motion plus the amendment as made and let them stand side by side on the record.

The CHAIRMAN: They are already on the record half a dozen times during this session.

Mr. FULTON: You are still faced with the problem. You have to have some motion adopted, now that you have voted on a so-called amendment.

Mr. JUTRAS: I submit we vote on the motion as amended.

The CHAIRMAN: Fine. Is that agreeable? The motion as amended will be:

That this committee is of the opinion that no further evidence is now required for our purposes, but that we recommend that further consideration be given to the Indian Act in two years' time.

Mr. FULTON: I was confused. You say "the motion as amended". We have just voted on an amendment so-called.

Mr. JUTRAS: Well, the only thing to do is to vote on the ruling of the Chair.

Mr. FULTON: The situation we are in is that we have now got to vote on the main motion.

The CHAIRMAN: The main motion is:

That this committee is of the opinion...

Mr. FULTON: I repeat and insist, Mr. Chairman, that the amendment so called did not even contain the words that the motion be amended by doing

this or that. I contend it was a straight vote on a substantive resolution, and that the main motion is still before the committee. So I must ask for a vote on the main motion.

The CHAIRMAN: What do you have to say, Mr. Simmons?

Mr. SIMMONS: I mentioned that it was an amendment to the motion made by Mr. Fulton.

Mr. FULTON: It was not an amendment as such and it was not presented as such.

Mr. JUTRAS: At the time the amendment was presented, Mr. Fulton did not raise the point of order.

Mr. FULTON: Yes I did!

Mr. JUTRAS: But we did not vote on it at the time. We voted on the amendment, and the amendment was accepted by the committee as an amendment.

Mr. FULTON: Surely this committee can only vote on a motion as read by the Chairman. The Chairman would usually know about the meaning of the motion. He did not read the amendment to that effect and the motion was amended. We therefore voted on what in effect it is—a substantive resolution. You still have a motion before the chair which I presented and which has not been voted on, amended, or dealt with, and I am asking that we have a vote on the motion.

Mr. JUTRAS: Is it not a fact that the Chairman always referred to what Mr. Simmons raised as an amendment? He accepted it from Mr. Simmons as an amendment and ruled on it as an amendment.

Mr. FULTON: The Chairman cannot rule it an amendment if in fact it is not. That has been clearly established.

Mr. NOSEWORTHY: You should give us the original motion plus the amendment.

The CHAIRMAN: If it is agreeable to the committee, and if the committee so orders, we will put the motion once more, have it amended once more, and start the whole thing over again.

Mr. WOOD: That might be the quickest way.

Mr. GIBSON: Yes, let us do that.

The CHAIRMAN: It has been agreed that I shall again put the motion. It is:

That in addition to any other witnesses to be heard your committee should call and hear evidence from representative Indian delegates on their desires and opinions with respect to bill 79.

Now, it has been amended by Mr. Simmons as follows:

That all of the words after "that" be struck out and that the following be substituted therefor: This committee is of the opinion that no further evidence is now required for our purposes and that we recommend that further consideration be given to the Indian Act in two years' time.

Mr. FULTON: On a point of order I would say that is not an amendment; it is a direct negative.

The CHAIRMAN: I have already ruled that it is an amendment.

Mr. FULTON: I appeal the ruling.

The CHAIRMAN: Mr. Fulton is now appealing from the ruling of the Chair that this is not a proper amendment. All those in favour of upholding the Chairman's ruling will please say yes?

Mr. FULTON: May we have a show of hands?

Mr. BLACKMORE: It should be recorded.

(Chairman's ruling carried on recorded vote.)

The CHAIRMAN: Now, we have disposed of the ruling on the amendment. We shall now deal with the amendment to the motion.

I suppose you want that recorded too?

Mr. FULTON: I think we should; it will save time later.

The CHAIRMAN: Are you ready for the question?

(Amendment carried on recorded vote.)

Now, we shall deal with the motion as amended.

Do you want this vote recorded?

Mr. FULTON: Carried on division.

Carried.

Hon. Mr. HARRIS: May I just interrupt long enough to put on the record the treaties that Mr. Hatfield was so concerned about. I forgot them. (See Appendix B.)

Mr. APPLEWHAITE: Are they in effect?

Hon. Mr. HARRIS: Well we had a good deal of difficulty in deciding what treaties he had in mind. The one that he spoke of by name is here. All that it says, is a reference to hunting and fishing as referred to in the Syllaby case, also it provides for them meeting annually for the purpose of swearing allegiance.

The CHAIRMAN: Shall the bill carry?

Mr. FULTON: On division.

The CHAIRMAN: It is moved by Mr. Wood, seconded by Mr. Welbourn that the bill be reprinted as amended.

Carried.

Shall I report the bill to the House?

Mr. FULTON: Mr. Chairman, I think there are one or two recommendations which some members of the committee would be glad to suggest should be incorporated in the report to the House. I would like to suggest, therefore, that we have a further meeting at which the report can be considered and adopted.

Hon. Mr. HARRIS: I speak subject to correction but I think the only duty of the committee is to report the bill with or without amendment, and that you cannot add other matters. Perhaps I am wrong.

The CHAIRMAN: That is the usual thing.

Mr. FULTON: Your position is that the committee is not in a position where it can make recommendations to the House?

Hon. Mr. HARRIS: Recommendations should be incorporated as amendments to the bill if you want it done that way. This is not a committee to investigate Indian affairs, it is a special committee to deal with the bill.

Mr. NOSEWORTHY: Would you read the letter that I gave you? I want that on the record and you have not disposed of it.

The CHAIRMAN: It is a letter addressed to Mr. J. W. Noseworthy, M.P., at the House of Commons, Ottawa, Ontario, and dated April 9, 1951:

Dear Mr. Noseworthy:

We the undersigned Mohawk Six Nation Confederacy Life Chiefs on the Lake of Two Mountains Kanasatake desire the privilege of appearing before the parliamentary committee set up for the purpose of studying Bill No. 79.

Since we understand that you are a member of that committee we will appreciate it if you will ask the committee to give us the right to appear before it.

Yours very truly,

(Signed) James Montour—Oka, Que.

Simon K. Simon—Lake of Two Mountains.

That matter has already been disposed of by the motion.
Shall I therefore report the bill to the House?

Agreed.

Mr. FULTON: Is it on the record that the bill was carried on division?

The CHAIRMAN: I do not think you did that.

Mr. FULTON: I did.

The CHAIRMAN: Before we adjourn I think it is only fair, following out Mr. Simmons' suggestion which I regret I overlooked, to say that we appreciate very much the minister coming here and so efficiently giving his views and his assistance to this committee. I think that would only be fair and that you would want me to do so on your behalf. I extend to the minister my sincere appreciation for his efforts herein and for his efforts on behalf of the Indians in the past several months.

Mr. BLACKMORE: I believe that would be carried unanimously.

The committee adjourned.

APPENDIX "A"

WAIVER OF EXEMPTION FROM TAXATION

Form prescribed by the Minister of Citizenship and Immigration pursuant to section 14(2) of The Dominion Elections Act, 1938.

(One copy to be retained by the Indian executing the waiver;
one copy to be retained by the Indian Superintendent for the reserve
on which the Indian executing the waiver ordinarily resides.)

Province of	}	In the matter of qualification to vote at a Dominion election pursuant to section 14 of The Dominion Elections Act, 1938.
To WIT		

I,, the undersigned, a member
of, Band of Indians, in the Province
of, do, for the purposes of (*) sub-
paragraph (ii) of paragraph (f) of subsection 2 of section 14 of the Dominion
Elections Act, 1938, hereby waive any right I have to any exemption from
taxation on or in respect of personal property as provided by the Indian Act.

In witness whereof I have hereunto set my hand and seal this.....
.....day of....., 19....

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF	} (Signature)
	 (Address)

APPENDIX "B"

A. & W. I.
Vol. 31
P. 229.

22 Nov. 1752.

Enclosure in letter of Governor Hopson to The Right
Honourable The Earl of Holderness 6th of Dec. 1752.

* * *

"Treaty or Articles of Peace and Friendship

Renewed between

His Excellency Peregrine Thomas Hopson Esquire Captain General and Governor
in Chief in and over His Majesty's Province of Nova Scotia or Acadie.
Vice Admiral of the same and Colonel of one of His Majesty's Regiments
of Foot and His Majesty's Council on behalf of His Majesty.

And

Major Jean Baptiste Cope, chief Sachem of the Tribe of Mick Mack Indians
Inhabiting the Eastern Coast of the said Province, and Andrew Hadley
Martin, Gabriel Martin and Francis Jeremiah, Members and Deligates of
the said Tribe, for themselves and their said Tribe their heirs, and the heirs
of their heirs forever, Begun made and Concluded in the manner, form and
Tenor following vizt;

1. It is agreed that the Articles of Submission and Agreement made at
Boston in New England by the Delegates of the Penobscot Norridgwoik and
St. John's Indians, in the year 1725 Ratified & Confirmed by all the Nova Scotia
Tribes at Annapolis Royal in the Month of June 1725 and lately Renewed with
Governor Cornwallis at Halifax and Ratified at St. Johns River, now read over
Explained and Interpreted shall be and are hereby from this time forward
renewed, reiterated and forever Confirmed by them and their Tribe, and the said
Indians for themselves and their Tribe and their Heirs aforesaid do make and
renew the same Solemn Submissions and promises for the strict observance of
all the Articles therein Contained as at any time heretofore hath been done.

2. That all Transactions during the late War shall on both sides be buried
in Oblivion with the Hatchet, And that the said Indians shall have all favour,
Friendship & Protection shown them from this His Majesty's Government.

3. That the said Tribe shall use their utmost Endeavours to bring in the
other Indians to Renew and Ratify this Peace, and shall discover and make
known any attempts or designs of any other Indians or any Enemy whatever
against His Majesty's Subjects within this Province so soon as they shall know
thereof and shall also hinder and Obstruct the same to the utmost of their Power
and on the other hand If any of the Indians refusing to ratify this Peace shall
make War upon the Tribe who have now Confirmed the same; they shall upon
Application have such aid and assistance from the Government for their defence
as the Case may require.

4. It is agreed that the said Tribe of Indians shall not be hindered from,
but have free liberty of Hunting & Fishing as usual and that if they shall think
a Truck house needfull at the River Chibenaccadie or any other place of their
resort they shall have the same built and proper Merchandise lodged therein to
be exchanged for what the Indians shall have to dispose of and that in the mean-

time the said Indians shall have free liberty to bring for sale to Halifax or any other Settlement within this Province, skins, feathers, fowl, fish or any other thing they shall have to sell, where they shall have liberty to dispose thereof to the best advantage.

5. That a Quantity of bread, flour, and such other Provisions, as can be procured, necessary for the Familys, and proportionable to the Number of the said Indians, shall be given them half yearly for the time to come; and the same regard shall be had to the other Tribes that shall hereafter Agree to Renew & Ratify the Peace upon the Terms and Conditions now Stipulated.

6. That to Cherish a good Harmony and mutual Correspondence between the said Indians and this Government His Excellency Peregrine Thomas Hopson, Esqr. Capt. General & Governor in Chief in & over His Majesty's Province of Nova Scotia or Accadie Vice Admiral of the same & Colonel of One of His Majesty's Regiments of Foot hereby promises on the part of His Majesty that the said Indians shall upon the first day of October Yearly, so long as they shall Continue in Friendship, Receive Presents of Blankets, Tobacco, some Powder & Shott, and the said Indians promise once every year upon the said first of October to Come by Themselves or their Delegates and Receive the said Presents and Renew their Friendship and Submissions.

7. That the Indians shall use their best Endeavours to save the Lives & Goods of any People shipwrecked on this Coast where they resort and shall Conduct the People saved to Halifax with their Goods, and a Reward adequate to the Salvadge shall be given them.

8. That all Disputes whatsoever they may happen to arise between the Indians now at Peace and others His Majesty's Subjects in this Province shall be tryed in His Majesty's Courts of Civil Judicature, where the Indians shall have the same benefits, Advantages and Privileges as any others of His Majesty's Subjects.

In Faith & Testimony whereof, the Great Seal of the Province is hereunto Appended, and the Partys to these Presents have hereunto interchangeably Set their Hands in the Council Chamber at Halifax this 22nd day of Novr. 1752 in the 26th Year of His Majesty's Reign.

P. T. HOPSON,
CHAS. LAWRENCE,
BENJ. GREEN,
JNO. SALUSBURY,
WILLM. STEELE,
JNO. COLLIER.

his
JEAN BAPTISTE x COPE,
mark
his
AUDREE HADLEY x MARTIN,
mark

his
FRANCOIS x JEREMIE,
mark

his
GABRIEL x MARTIN,
mark

Certified a true copy of the record copy from the Colonial Records Office, London, England, in the Public Archives at Ottawa.

(Sgd) G. M. MATHESON
In Charge of Records
Department of Indian Affairs.

15th Aug. 1928.

No. 239.

Articles of Submission and Agreement made at Boston, in New England, by Sanquaaram *alias* Loran Arexus, François Xavier and Meganumbe, delegates from Penobscott, Naridgwack, St. Johns, Cape Sables and other tribes inhabiting within His Majesty's territories of Nova Scotia or New England.

Whereas His Majesty King George by concession of the Most Christian King, made at the Treaty of Utrecht, is become the rightful possessor of the Province of Nova Scotia or Acadia according to its ancient boundaries: We, the said Sanquaaram *alias* Loran Arexus, François Xavier and Meganumbe, delegates from the said tribes of Penobscott, Naridgwack, St. Johns, Cape Sables and other tribes inhabiting within His Majesty's said territories of Nova Scotia or Acadia and New England, do in the name and behalf of the said tribes we represent, acknowledge His said Majesty King George's jurisdiction and dominion over the territories of the said Province of Nova Scotia or Acadie, and make our submission to His said Majesty in as ample a manner as we have formerly done to the Most Christian King.

And we further promise on behalf of the said tribes we represent that the Indians shall not molest any of his Majestie's subjects or their dependants in their settlements already made or lawfully to be made, or in their carrying on their traffick and other affairs within the said Province.

That if there happens any robbery or outrage committed by any of the Indians, the tribe or tribes they belong to shall cause satisfaction and restitution to be made to the parties injured.

That the Indians shall not help to convey away any soldiers belonging to His Majestie's forts, but on the contrary shall bring back any soldier they shall find endeavouring to run away.

That in case of any misunderstanding, quarrel or injury between the English and the Indians no private revenge shall be taken, but application shall be made for redress according to His Majestie's laws.

That if the Indians have made any prisoners belonging to the Government of Nova Scotia or Acadie during the course of the war they shall be released at or before the ratification of this treaty.

That this treaty shall be ratified at Annapolis Royal.

Dated at the Council Chamber in Boston, in New England, this fifteenth day of December, *Anno Domini* one thousand seven hundred and twenty-five, *Annoq. Regni Regis Georgii, Magnae Britanniae, &c., Duoddecimo.*

Signed, sealed and delivered in the presence of the Great and General Court or Assembly of the Province of the Massachusetts Bay.	<div style="display: flex; justify-content: space-between;"> <div> SANQUAARAM (totem) <i>alias</i> LORON. AREXUS (totem). FRANCOIS XAVIER (totem). MEGANUMBE (totem). </div> <div> [L.S.] [L.S.] [L.S.] [L.S.] </div> </div>
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Attests: J. WILLARD, *Secry.*

We, the underwritten Chiefs and others of the St. Johns, Cape Sables and other tribes of Indians inhabiting within this His Majesty's Province of Nova Scotia or Acadia having had the several articles of the within written Instrument (being a true copy of what was signed in our behalf by Sanquaaram *alias* Loran Arexus, François Xavier and Maganumbe, our delegates at the Treaty of Peace concluded at Boston) distinctly read over, faithfully interpreted and by us well

understood, do hereby for ourselves and in behalf of our respective tribes consent to ratifie and confirm all the within mentioned articles and that the same shall be binding to us and our heirs forever to all intents and purposes.

IN WITNESS WHEREOF, we have signed, sealed and delivered these presents to the Honourable Lieut.-Governor in the presence of several officers belonging to His Majestie's troops and other gentlemen underwritten.

Done at the Fort of Annapolis Royal, in Nova Scotia, this thirteenth day of May, in the first year of the reign of Our Sovereign Lord, George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c., Annoq. Domini, 1728.

In the presence of:

FRS. ALDRIDGE,		St. Johns River Indians.	
HEN. DANIELL,		IGNACE, (totem)	[L.S.]
REY. NUGENT,		MICHAEL, (totem)	Chiefs. [L.S.]
OTHO HAMILTON,		PIERRE x PAUL,	[L.S.]
RICHARD BULL,		THOMAS x ———,	[L.S.]
JNO. HANDFIELD,		AUGUSTINE x GREGOIRE,	[L.S.]
ROBERT WROTH,		CAPTAIN (totem) MOSES,	[L.S.]
CHAS. ALDRIDGE,		GUILLEAUME, x	[L.S.]
L. NATTS,		BARNABY, (totem),	[L.S.]
SAML. COTTNAM,		FRANCIS (totem) DE SALLE,	[L.S.]
F. MANGEAN,		Fils de Nepavomte,	
JOSEPH BISSELL,		FRANÇOIS (totem),	[L.S.]
WM. ARMSTRONG,		MICHAEL (totem),	[L.S.]
		FRANÇOIS x GERMAIN,	[L.S.]
		FRANCIS DE SALLE	
		(totem),	Chiefs. [L.S.]
		JOSEPH (totem),	
		BERNARD, x	[L.S.]
		JOSEPH (totem) SALLE,	[L.S.]
		MISTA (totem) TAGAMISH,	[L.S.]
		PAUL (totem),	[L.S.]
		DENNIS,	[L.S.]
		GIPSIES,	[L.S.]
		FRANÇOIS, x	[L.S.]
		JOSEPH (totem) OGSTER,	[L.S.]
		JOSEPH x ST. AUBE,	[L.S.]
		FRANÇOIS (totem),	[L.S.]
		EMANUEL.	[L.S.]

ANNAPOLIS ROYAL, Sept. 24th, 1728.

Signum

x CHARLES MANDIDUPKIKE, [L.S.]
*Chief Sachem of the whole Tribe
of St. Johns Indians.*

JACQUES x MON ROUSSEM, [L.S.]
OHEUIRE OHEVOURN, [L.S.]
GREGOIRE x —, [L.S.]

poine naouer
KETOUDASKESSE MARTIN (totem) [L.S.]
his rot

NEPUM (totem) OCCILE. [L.S.]
mark

HALIFAX, N.S., 30th September, 1886.

I certify that the foregoing is a true copy of a treaty made at Boston on the fifteenth day of December, A.D. 1725, with the delegates from the Indian tribes of Penobscott, Naridgwack, St. John, Cape Sable and other tribes, with the ratification on the back thereof at Annapolis Royal, dated the 30th day of May, A.D. 1728, now in possession of the Government of Nova Scotia.

THOMAS B. AKINS,

Commissioner of Public Records, Province of Nova Scotia.

ARTICLES OF SUBMISSION AND AGREEMENT made at Boston, in New England, by Sanquaaram alias Loron Erexus, François Xavier and Maganucbe, delegates from the tribes of Penobscott, Naridgwack, St. Johns, Cape Sables, and other tribes of the Indians inhabiting within his Majestie's territories of Nova Scotia and New England.

Whereas, His Majestie King George, by the concession of the Most Christian King made at the Treaty of Utrecht, is become the rightful possessor of the Province of Nova Scotia or Accadie, according to its ancient boundaries: We, the said Sanquaaram alias Loron Erexus, François Xavier and Maganucbe, delegates from the said tribes of Penobscott, Naridgwack, St. Johns, Cape Sables and other tribes inhabiting within his Majestie's said territories of Nova Scotia or Accadie and New England, do, in the name and behalf of the said tribes we represent, acknowledge His said Majestie King George's jurisdiction and dominion over the territories of said Province of Nova Scotia or Accadie, and make our submission to His said Majestie in as ample a manner as we have formerly done to the Most Christian King.

And we further promise, in behalf of the said tribes we represent, that the Indians shall not molest any of His Majestie's subjects or their dependants in their settlements already or lawfully to be made, or in their carrying on their trade and other affairs within said Province.

That if there happens any robbery or outrage committed by any of the Indians the tribe or tribes they belong to shall cause satisfaction and restitution to be made to the parties injured.

That the Indians shall not help to convey away any soldiers belonging to His Majestie's forts, but on the contrary, shall bring back any soldier they shall find endeavouring to run away.

That in any case of any misunderstanding, quarrell or injury between the English and the Indians no private revenge shall be taken, but application shall be made for redress according to His Majesty's laws.

That if the Indians have made any prisoners belonging to the Government of Nova Scotia or Accadie during the course of war they shall be released at or before the ratification of this treaty.

That this treaty shall be ratified at Annapolis Royall.

Dated at the Council Chamber at Boston, in New England, this fifteenth day of December, *An. Dom.*, one thousand seven hundred and twenty-five. *Annoq. Ri Ri Georgii Mag., Britan, &c., Duodecimo.*

I, Joannes Pedousaghtigh, Chief of the Tribe of Chinecto Indians, for myself and in behalf of my Tribe, my heirs and their heirs forever, and we, François Aurodowish, Simon Sactawino and Jean Baptiste Maddouanhook * * * * deputys from the Chiefs of the St. Johns, Indians and invested by them with full power for that purpose, do in the most solemn manner renew the above articles of agreement and submission, and every article thereof, with His Excellency Edward Cornwallis, Esquire, Capt. Gener'l and Governor in Chief in and over His Majestie's Province of Nova Scotia or Accadie, Vice-Admiral of the same, Colonel in His Majestie's service and one of His bed chamber. In witness whereof, I, the said Joannes Pedousaghtigh, have subscribed this treaty and affixed my seal, and we the said François Aurodowish, Simon Sactawino and Jean Battiste Maddouanhook * * * in behalf of the chiefs of the Indian Tribes we represent, have subscribed and affixed our seals to the same, and engage that the said Chief shall ratifie this treaty at St. Johns. Done in Chibucto Harbour the fifteenth of August, one thousand seven hundred and forty-nine.

In presence of:

L. E. HOPSON,
T. MASCARENE,
ROBT. ELLISON,
JAMES T. MERIER,
CHAS. LAWRENCE,
ED. HOW,
JOHN GORHAM,
BENJ. GREEN,
JOHN SALUSBURY,
HUGH DAVIDSON,
WM. STEELE.

} Members of the Council for Nova Scotia.

JOANNES PEDOUSAGHTIGH, (totem) [L.S.]
FRANCOIS AURODOWISH, (totem) [L.S.]
SIMON SACTAWINO, (totem) [L.S.]
JEAN BATTISTE MADDOUANHOOK, (totem) [L.S.]

The Articles of Peace on the other side, concluded at Chebucto, the fifteenth of August, one thousand seven hundred and forty-nine, with His Excellency Edward Cornwallis, Esqr., Capt. General, Governour and Commander in Chief of His Majest's Province of Nova Scotia or Accadie, and signed by our deputies, having been communicated to us by Edward How, Esqr., one of His Majest's Council for said Province, and faithfully interpreted to us by Madame De Bellisle, inhabitant of this river, nominated by us for that purpose. We the Chiefs and Captains of the River St. Johns and places adjacent do for ourselves and our different Tribes conform and ratify the same to all intents and purposes. Given under our hands at the River St. Johns this fourth day of September, one thousand seven hundred and forty-nine, in the presence of the under written witnesses.

ED. HOW, of his Majesty's Council.
NATH. DONNELL,
JOHN WEARE,

JOSEPH WINNIETT,
JOHN WENN,
ROBERT MCKOUN,
MATT. WINNIETT,
JOHN PHILLIPPS.

MICHELL (totem) NARREYONES, *Chief*,
NNOLA (totem) NEQUIN, *Capt.*,
FRANÇOIS (totem) DE XEWIER ARCHIBANE MARGILLIE,
PIERRE (totem) ALEXANDER MARGILLIE,
AUGUSTA (totem) MEYAWET, *Maitre Clef de la Rio.*,
FRANÇOIS (totem) MAYAWYAWET, *Maitre Serure Dt.*,
RENE (totem) NEYUM,
NEPTUNE (totem) PIERRE PAUL, *Chief of Capneyneidy*,
SUAPA (totem) PAPAULONET,
FRANÇOIS (totem) GORMAM, *Capt.*,
PIERRE (totem) BENNOIT, *Capt.*,
FRANÇOIS (totem) DRINO, *Capt.*,
RENE (totem) FILS DAMBROUS, *Capt.*

HALIFAX, NOVA SCOTIA, 30th September, 1886.

I certify that the foregoing document is a true copy and a facsimile of the original treaty written on parchment, made at Boston, on the 15th December, 1725, and the renewal of the same by the Indian deputies, at Halifax, Nova Scotia (Chebucto) on the 15th August, 1749. Also, the ratification thereof by the Chiefs and Captains of the Tribes at the River St. John, on the 4th September, 1749. Indorsed thereon. In possession of the Government of Nova Scotia.

THOMAS B. AKINS,

Commr. Public Records, Nova Scotia.

By the parties to these Articles: the following Article is unanimously and reciprocally agreed upon for the more effectual preservation of the peace: That if any hostility shall be committed or offered to be committed by any Indians on any of the English subjects the Tribes who have entered into and ratified the treaty shall furnish and supply fifty Indians with a Captain of their own and the English two hundred and fifty, and so in proportion a greater or lesser number as the occasion shall require. The forces to be paid and subsisted by the English and under the conduct of such a General Officer as the English Governour may judge proper to pursue such refractory Indians either by sea or land and compell them to live peaceably and quietly with their neighbours. And if any other Tribes of Indians shall make warr upon any of the Tribes now enter'd into peace, in such a case the English shall assist them att their own cost and charge with the like proportion of men as may be necessary.

Done att the Conference att Casco Bay, this twenty-fifth day of July, in the thirteenth year of the reign of Our Sovereign Lord King George, *Annoque Domini*, 1727.

In presence of:

NATT. PAINE,
THOM. BERRY,
JOHN QUINCEY,
SAML. WILLARD,
JOSEPH WHITE,
STEPN. EASTWICK,
JOHN ALDEN,
AMOS. TURNER,
ED. SHOVE,
JOHNSON HARMAN,
JEREMIAH MOULTON,
RICHARD BOURN,
STEPN. MINOTT,
JOB LEWIS,
THOM. SMITH,
JOHN SMITH,
JOSEPH HEATH,
HENRY PHILIPPS,
JOHN FITCH,
CYPRIAN JEFFRY,
JOAN GILES,
SAML. JORDAN,
JOSEPH BANE,
PETER WEARE,
JOHN WAINWRIGHT, *Clerk Con.*

Lieut.-Govern'r of the Massacht's Bay,
WILLM. DUMMER. [L.S.]
Lieut.-Gov'r of New Hampshire,
J. WENTFORTH. [L.S.]
Comm'rs for the Govern't of Nova Scotia,
T. MASCARENE. [L.S.]

Wowenock.

his
WOOSSZAU (totem) RABOONETT, [L.S.]
mark.

his
QUINOISE (totem), [L.S.]
mark.

his
NEMADGEEN (totem), [L.S.]
mark.

OSSAU WERRAMETT, his son,
his
SAUWERRA (totem) METT, [L.S.]
mark.

Arresguntacook.

his
AUYAU (totem) MOWETT, [L.S.]
mark.

his
BAQUAHA (totem) AT, [L.S.]
mark.

his
SOUSSACK (totem) [L.S.]
mark.

ADUAWANDOCK's son *Sachem of
Pegewahett.*

his
SCHOWOSS (nia), [L.S.]
mark.

his
MAGUAIE (totem) WADEO, [L.S.]
mark.

his
BAIAUNUM (totem) BAUMETT, [L.S.]
mark.

Penobscott.

his
EGERREMETT (totem) [L.S.]
mark.

his
JOSEPH (totem) [L.S.]
mark.

STAWNEERESS	his (totem) mark.	[L.S.]
WEGUEHRESS	his (totem) mark.	A O HOAM [L.S.]
FRANÇOIS	his (totem) mark.	XAVIER, [L.S.]
AHENGUID	his (totem) mark.	[L.S.]
AREXIS	his (totem), mark.	[L.S.]
BATTEREMEN	his (totem), mark.	<i>Secretary</i> , [L.S.]
FRANÇOIS	his (totem) mark.	XAVIER, Jr., [L.S.]
NUDAU	his (totem) mark.	KENGEEK, [L.S.]
<i>Norrigewocks.</i>		
SOUS SOCK	his (totem) mark.	2nd Chief, [L.S.]
NAGATWIG	his <i>alias</i> (totem) mark.	CAPT. JOHN [L.S.]
MEDOCK	his (totem) mark.	AWANDO, [L.S.]
OGUK	his (totem) mark.	TANDO, [L.S.]
EDALL	his (totem) mark.	WEENO, [L.S.]
JOHN	his (totem) mark.	NEGON, [L.S.]
BOOREEZ	his (totem) mark.	[L.S.]
MOXUT	his (totem), mark.	<i>Chief Sachem</i> , [L.S.]
WEWORNA	his (totem), mark.	<i>alias</i> SHEEPS COTT
	JOHN	[L.S.]
SAVATIN	his (totem), mark.	[L.S.]

his
 ERIEMANERECK (totem), [L.S.]
 mark.

Ameroscogin.

his
 SAAROON (totem), [L.S.]
 mark.

Penobscott.

his
 AUGUSTIN (totem), [L.S.]
 mark.

his
 MAJOR (totem) VICTOR, [L.S.]
 mark.

his
 AETCON (totem), [L.S.]
 mark.

his
 UMPOWREECK (totem), L.S.
 mark.

his
 TOMALL (totem), [L.S.]
 mark.

his
 PATTERE (totem) MEN, [L.S.]
 mark.

his
 ERREMAN (totem) MEEK, [L.S.]
 mark.

Penobscott.

his
 WENON (totem) GONETT, [L.S.]
 mark.

his
 ESPEQUE (totem) HAUT, [L.S.]
 mark.

his
 SAQUARAM, *alias* LORON (totem), [L.S.]
 mark.

his
 LOVIS (totem), [L.S.]
 mark.

his
 CAESAR (totem) MOXES, [L.S.]
 mark.

HALIFAX, NOVA SCOTIA, September 30th, 1886

The foregoing is a true copy and a facsimile of the original Articles of agreement with the Indians, done at the Conference at Casco Bay, on the 25th July, A.D. 1727, in possession of the Government of Nova Scotia. The original document is written on parchment, and contains seals attached to the signatures.

THOS. B. AKINS,

Comr. of Public Records, Nova Scotia.

BINDING SECT. JUL 2 1960

GOVT PUBNS

